

EXHIBIT A

JUN. 5. 2007 3:05PM NUSBAUM STEIN

NO. 555

P. 3/9

8397

Case 1:33-cv-001

Document 776

Filed 03/23/2007

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I

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NUSBAUM, STEIN, GOLDSTEIN,
BRONSTEIN & KRON, P.A.,
20 Commerce Blvd., Suite E
Succasunna, NJ 07876
(973) 584-1400
Attorneys for Plaintiffs

CHAYA GROSSBAUM and
MENACHEM GROSSBAUM, her
spouse, individually and as guardians
ad litem of the infant ROSIE
GROSSBAUM,

Plaintiffs,

vs.

GENESIS GENETICS INSTITUTE,
LLC, of the State of Michigan,
MARK R. HUGHES, NEW YORK
UNIVERSITY SCHOOL OF MEDICINE
and NEW YORK UNIVERSITY
HOSPITALS CENTER, both
corporations in the State of New York,
ABC CORPS. 1-10, and JOHN DOES
1-10,

Defendants.

DOCKET NO.:

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiffs, Chaya Grossbaum and Menachem Grossbaum, her spouse,
individually and as guardians *ad litem* of the infant Rosie Grossbaum, complaining of
the Defendants, Genesis Genetics Institute, LLC, a limited liability corporation in the
State of Michigan, New York University School of Medicine and New York University

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Hospitals Center, both corporations in the State of New York, ABC Corps. 1-10, and John Does 1-10, allege and say:

JURISDICTION

1. The Plaintiffs, Chaya Grossbaum and Menachem Grossbaum, her spouse (hereafter "Plaintiffs"), are citizens of the State of New Jersey, residing at 122 Lake Valley Road, Morristown, New Jersey.

2. At all relevant times, Defendants, New York University School of Medicine and New York University Hospitals Center, were corporations of the State of New York situated at 540 First Avenue, New York, New York.

3. At all relevant times herein, Defendant Genesis Genetics Institute was a limited liability corporation in the State of Michigan with offices at 1380 East Jefferson Avenue, Detroit, Michigan, and the Defendant, Mark R. Hughes, a physician and resident of the State of Michigan, was its director.

4. Jurisdiction is proper within this United States District Court for the District of New Jersey, the venue within which the Plaintiffs presently reside, pursuant to 28 U.S.C. §1332 as there is diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.00, exclusive of costs, interest and punitive damages.

COUNT ONE

1. Plaintiffs repeat and make a part hereof the Jurisdictional paragraphs of this Complaint as if set forth fully at length herein.

2. Prior to March 2004, the Plaintiffs, in contemplation of parenthood, were tested for genetic mutations that would predispose any infant which they produced to disability and impairment. Said testing resulted in identifying both of the Plaintiffs,

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Chaya Grossbaum and Menachem Grossbaum, as carriers of the cystic fibrosis gene mutation.

3. On or about ~~March 30, 2004~~ the Plaintiff, Chaya Grossbaum, came under the care of the New York University School of Medicine, Department of Obstetrics and Gynecology, in their program for *in vitro* fertilization and pre-implantation genetic diagnosis.

4. The aforesaid physicians at Defendant, NYU School of Medicine, advised the Plaintiffs to undergo pre-implantation genetic diagnosis (PGD) of their embryos to eliminate the potential for a cystic fibrosis baby, and were recommended for PGD studies to be undertaken by Defendant, Genesis Genetics Institute, LLC (hereinafter "Genesis Genetics"), and its director, Defendant, Dr. Mark R. Hughes, in Detroit Michigan.

5. Thereafter, the Plaintiffs consulted with Defendants, Genesis Genetics and Dr. Mark R. Hughes, and were advised that Genesis Genetics would be able to identify the presence of the cystic fibrosis gene mutations in the embryos pre-implantation so they would avoid parenting a baby with such disability.

6. On or about ~~July 14, 2004~~ the Plaintiffs underwent retrieval and insemination procedures at Defendant, NYU Hospitals Center, for the creation of embryos that were forwarded to Defendant, Genesis Genetics, in Detroit, Michigan, for pre-implantation genetic diagnosis.

7. On or about ~~July 19, 2004~~ the Defendant, Genesis Genetics, reported the results of their diagnostic studies to the physicians at Defendant, NYU School of Medicine, advising that 2 of 10 embryos were free of the genetic mutations that were

suitable for a cystic fibrosis free infant, and those were the embryos that were said to be implanted.

8. On March 25, 2005, the Plaintiffs gave birth to a baby girl, Infant Plaintiff Rosie Grossbaum, at Saint Clare's Hospital, Denville, New Jersey, who was disabled with cystic fibrosis.

9. On information and belief, the physicians of Defendants, NYU School of Medicine and NYU Hospitals Center, failed to meet the required standards of care in selecting and confirming the appropriate diagnostic tests that were performed by Defendant Genesis Genetics, and thereafter, implanted a defective embryo resulting in the birth of a cystic fibrosis infant.

10. As a further result of the negligence of the Defendants, NYU School of Medicine and NYU Hospitals Center, the Plaintiff Chaya Menachem has suffered and will continue to suffer considerable emotional distress with respect to the delivery and upbringing of the infant Plaintiff Rosie Grossbaum due to the special needs for care and treatment of a cystic fibrosis baby and the attendant risks to the child.

11. As a further result of the negligence of the Defendants, NYU School of Medicine and NYU Hospitals Center, the Plaintiffs will suffer considerable costs and expenses for the care and treatment of their cystic fibrosis baby, infant Plaintiff Rosie Grossbaum.

12. As a further result of the negligence of the Defendants, NYU School of Medicine and NYU Hospitals Center, the infant Plaintiff, Rosie Grossbaum, upon reaching the age of maturity, will be required to expend considerable sums of money in an effort to treat and manage her disabilities arising from cystic fibrosis.

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WHEREFORE, the Plaintiffs, Chaya, Menachem, and infant Rosie Grossbaum, demand judgment against the Defendants, NYU School of Medicine and NYU Hospitals Center, for damages, interest, and cost of suit.

COUNT TWO

1. Plaintiffs repeat and make a part hereof the Jurisdictional and Count One paragraphs of this Complaint as if set forth fully at length herein,

2. At all times herein, the Defendant Genesis Genetics held itself as an expert in performing pre-implantation diagnosis of embryos that are at risk for the birth of a cystic fibrosis infant.

3. At the relevant times herein, the Defendants, Genesis Genetics and Mark R. Hughes, assured the Plaintiffs that they had nothing to worry about in connection with the process of pre-implantation diagnosis, and they could be assured of a cystic fibrosis free baby on subsequent *in vitro* fertilization.

4. The Defendant Genesis Genetics performed diagnostic procedures in such a manner as to depart from accepted standards of care resulting in the delivery of a cystic fibrosis baby, the infant Plaintiff Rosie Grossbaum, by the Plaintiffs, Chaya and Menachem Grossbaum.

5. As a further result of the negligence of the Defendants, Genesis Genetics and Mark R. Hughes, the Plaintiff Chaya Menachem has suffered and will continue to suffer considerable emotional distress with respect to the delivery and upbringing of the infant Plaintiff Rosie Grossbaum due to the special needs for care and treatment of a cystic fibrosis baby and the attendant risks to the child.

6. As a further result of the negligence of the Defendants, Genesis Genetics and Mark R. Hughes, the Plaintiffs will suffer considerable costs and expenses for the care and treatment of their cystic fibrosis baby, infant Plaintiff Rosie Grossbaum.

7. As a further result of the negligence of the Defendants, Genesis Genetics and Mark R. Hughes, the infant Plaintiff, Rosie Grossbaum, upon reaching the age of maturity, will be required to expend considerable sums of money in an effort to treat and manage her disabilities arising from cystic fibrosis.

WHEREFORE, the Plaintiffs, Chaya Grossbaum, Menachem Grossbaum, and Infant Rosie Grossbaum, demand judgment against the Defendants, Genesis Genetics and Mark R. Hughes, for damages, interest, and cost of suit.

COUNT THREE

1. Plaintiffs repeat and make a part hereof the Jurisdictional and Counts One through Two paragraphs of this Complaint as if set forth fully at length herein.

2. Defendants ABC Corps. 1-10 are fictitious entities whose identities are currently unknown and who shall be impleaded as soon as they are identified.

3. Defendants ABC Corps. 1-10 are entities presently unknown who through further discovery may be identified as being negligently involved in either the pre-implantation diagnosis or the implantation of the cystic fibrosis carrying embryos that resulted in the delivery of the cystic fibrosis infant Plaintiff Rosie Grossbaum.

WHEREFORE, the Plaintiffs, Chaya, Menachem, and infant Rosie Grossbaum, demand judgment against the Defendants, ABC Corps. 1-10, Genesis Genetics, Mark R. Hughes, NYU School of Medicine and NYU Hospitals Center, John Does 1-10, for damages, interest, and cost of suit.

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COUNT FOUR

1. Plaintiffs repeat and make a part hereof the Jurisdictional and Counts One through Three paragraphs of this Complaint as if set forth fully at length herein.

2. Defendants John Does 1-10 are fictitious individuals whose identities are currently unknown and who shall be impleaded as soon as they are identified,

3. Defendants John Does 1-10 are persons presently unknown who through further discovery may be identified as being negligently involved in either the pre-implantation diagnosis or the implantation of the cystic fibrosis carrying embryos that resulted in the delivery of the cystic fibrosis infant Plaintiff Rosie Grossbaum.

WHEREFORE, the Plaintiffs, Chaya, Menachem, and infant Rosie Grossbaum, demand judgment against the Defendants, John Does 1-10, Genesis Genetics, Mark R. Hughes, NYU School of Medicine and NYU Hospitals Center, ABC Corps. 1-10, for damages, interest, and cost of suit.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues.

NUSBAUM, STEIN, GOLDSTEIN
BRONSTEIN & KRON, P.A.
Attorney for Plaintiffs

Dated: March 23, 2007

By: Lewis Stein /s/
Lewis Stein

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JS 48 (Rev. 11/04)

CIVIL COVER SHEET

9044 8397 I

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Chaya Grossbaum and Menachem Grossbaum, her spouse, individually and as guardians ad litem of the infant Rosie Grossbaum

(b) County of Residence of First Listed Plaintiff MORRIS
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Genesis Genetics Institute, LLC, of the State of Michigan, Mark R. Hughes, NYU School of Medicine and NYU Hospital's Center, et al.

County of Residence of First Listed Defendant WAYNE
(ON U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

973-584-1400
Lewis Stein, Esq., NUSBAUM, STEIN, ET AL.
20 Commerce Blvd., Succasunna, NJ 07876

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|--|--|---|---|
| <input checked="" type="checkbox"/> 1 Citizen of This State
<input type="checkbox"/> 2 Citizen of Another State
<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 1 PTF
<input type="checkbox"/> 2 DEF
<input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State
<input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State
<input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 4 PTF
<input type="checkbox"/> 5 DEF
<input type="checkbox"/> 6 Foreign Nation |
|--|--|---|---|

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY/INJURY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 170 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 180 Recovery of Overpayments of Veterans' Benefits <input type="checkbox"/> 190 Other Consumer <input type="checkbox"/> 195 Consumer Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Absence Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 424 Copyrights <input type="checkbox"/> 425 Patent <input type="checkbox"/> 426 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Bank and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Consumer Challenge 12 USC 3410 <input type="checkbox"/> 590 Other Statutory Actions <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 592 Environmental Matters <input type="checkbox"/> 593 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Congressional Act of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Madonn in Vacato Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 601 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 601 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 601 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 601 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 601 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 601 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act

V. ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Plaintiffs sue Defendants involved in providing pre-implant genetic diagnosis which was faulty and resulted in cystic fibrosis baby.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

March 23, 2007

SIGNATURE OF ATTORNEY OF RECORD

Lewis Stein/s/

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FFP

JUDGE

MAJ. JUDGE

EXHIBIT B

2981.101

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
DOCKET NO. 07-CV-1359

CHAYA GROSSBAUM and MENACHEM
GROSSBAUM, her spouse, individually
, as guardians ad litem of the
infant, ROSIE GROSSBAUM,

Plaintiffs,

vs.

DEPOSITION OF:

CHAYA GROSSBAUM
(Volume 1)

GENESIS GENETICS INSTITUTE,
L.L.C., of the State of Michigan,
MARK R. HUGHES, M.D., NEW YORK
UNIVERSITY SCHOOL OF MEDICINE and
NEW YORK UNIVERSITY HOSPITALS
CENTER, both corporations in the
State of New York, ABC
CORPORATIONS 1-10 and JOHN DOE
1-10,

ORIGINAL

Defendants.

BEFORE: ESTHER J. HODGE, a Certified
Court Reporter and Notary Public of the State of
New Jersey, at the offices of NUSBAUM, STEIN,
GOLDSTEIN, BRONSTEIN & KRON, ESQS., 20 Commerce
Boulevard, Succasunna, New Jersey, on Wednesday,
December 17, 2008, commencing at 10:15 a.m.,
Pursuant to Notice.

GILMARTIN COURT REPORTING SERVICE

Certified Shorthand Reporters
28 Peterson Road
P.O. Box 5879
Hillsborough, New Jersey 08844
(908) 369-0080
FAX (908) 369-0081

C. Grossbaum - Direct

15

1 Q Do you remember the last question?

2 A Could you repeat it?

3 Q I believe the question was do you
4 have a plan in your mind at the present time as to
5 how many children you think you would like to
6 have?

7 A No.

8 Q How many siblings do you have?

9 A Four besides for me.

10 Q There's five children in your
11 family?

12 A Yes.

13 Q How about your husband's family?

14 A He has 11 in his family.

15 Q Plus him or including him?

16 A Including him.

17 Q When you got pregnant which gave
18 rise to Rosie's birth, was that your first
19 pregnancy?

20 A Yes.

21 Q I understand that you had had
22 testing done on you a number of years -- a few
23 years earlier at UMDNJ that let you realize that
24 you were a CF carrier. Is that right?

25 MR. STEIN: Let me help you out. I

C. Grossbaum - Direct

16

1 think the testing was done -- if you look at that
2 form, the specimens were taken at Morristown, and
3 they may have been sent to UMDNJ for analysis.

4 MR. EICHHORN: I'll rephrase it
5 then.

6 MR. STEIN: I think I'm helping you
7 out there.

8 MR. EICHHORN: I don't mind it.

9 Q You had some testing done on you a
10 couple of years before you ended up getting
11 pregnant with Rosie that led you to know that you
12 were a CF carrier. Correct?

13 A Yes, but that's not -- I knew
14 before that point.

15 Q You knew even before those tests?

16 A Yes.

17 Q When did you first learn that you
18 were a carrier of cystic fibrosis?

19 A In 2000 about.

20 Q How did you learn that?

21 A When I was -- when we were both in
22 high school and college, we got tested by an
23 organization called Dor Yeshorim.

24 Q What is Dor Yeshorim?

25 A It's an organization that goes to

C. Grossbaum - Direct

17

1 high schools and yeshivas and tests the students
2 for genetic conditions that are common amongst
3 Eastern European people.

4 Q So you were in high school at that
5 time?

6 A Yes.

7 Q Did you graduate from high school?

8 A Yes.

9 Q What year was that?

10 A 2008. Sorry, 1998.

11 Q And did you go for any formal
12 education after graduating high school?

13 A No.

14 Q So in 2000 when you had this
15 testing done through Dor Yeshorim, you were two
16 years graduated from high school at that point?

17 A Yes.

18 Q Now, by the way, you are not
19 yourself afflicted with cystic fibrosis. Am I
20 correct?

21 A Yes.

22 Q And your husband also is not.
23 Correct?

24 A Correct.

25 Q When you learned the results from

C. Grossbaum - Direct

18

1 the testing in 2000, did you learn, take efforts
2 to learn about CF at that time?

3 A Yes.

4 Q And what did you specifically learn
5 about the results of your testing vis-a-vis CF?

6 A I don't understand.

7 Q In other words -- I'll ask it this
8 way. Did this testing reveal that you were a
9 carrier of CF?

10 A Yes.

11 Q After you learned that, what did
12 you then learn on your own about CF?

13 A I learned about what the disease is
14 and how it works and what happens, you know -- the
15 disease.

16 Q And did you learn about if two
17 people are carriers --

18 MR. EICHHORN: Strike that.

19 Q Did you learn what is required for
20 a baby to be born with CF as opposed to just being
21 a carrier of CF?

22 A Yes.

23 Q What did you learn in that regard?

24 A That if both parents are carriers,
25 then the chances of a child being born with CF are

C. Grossbaum - Direct

19

1 about one in four.

2 Q And how did you learn this
3 information that you just explained to me?

4 A Several different ways. Through a
5 genetic counselor, through reading about it.

6 Q When did you see the genetic
7 counselor?

8 A 2001 I believe.

9 Q When you were growing up -- are you
10 still thinking on that one?

11 A I'm just trying to remember if it
12 was 2000 or 2001.

13 Q Let's say when you were growing up,
14 up until the time you graduated high school, did
15 you know anyone, have any friends -- did you have
16 any friends who had CF?

17 A No.

18 Q Did you know anyone who had CF?

19 A No.

20 Q After you graduated high school up
21 until the time that you met Dr. Hughes and the
22 people at the NYU IVF clinic, in that window of
23 time, did you know anyone with CF?

24 A I don't know what you mean by
25 "know." Personally have a relationship or know?

C. Grossbaum - Direct

30

1 mentioned?

2 MR. STEIN: That's besides the time
3 that she spends in school. You've got to
4 establish that first.

5 Q Obviously you need to be in school
6 to teach, but other than that, how much time is
7 required of you in order to be prepared to teach
8 these courses that you've mentioned?

9 A Usually I prepare over the course
10 of a week a few hours. I generally try to do it
11 one day of the week for the whole week.

12 Q Do you do that at night?

13 A Yes.

14 Q And I'm sorry. You said science,
15 language arts and what was the third?

16 A History.

17 Q Can you tell me, which came first?
18 Did you go to the NYU IVF clinic before or after
19 you had already talked with Dr. Hughes?

20 A Before.

21 Q Tell me how was it that you found
22 your way to the NYU clinic.

23 A We were referred to them.

24 Q By?

25 A Rabbi Jacobowitz.

C. Grossbaum - Direct

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1 Q What is his first name?

2 A I don't remember.

3 Q Can you tell me when you were
4 referred by Rabbi Jacobowitz to the NYU clinic?

5 A I would say it was some time in the
6 winter of 2004, probably late winter, early
7 spring.

8 Q So February, March, somewhere in
9 there?

10 A Yeah.

11 Q Who is Rabbi Jacobowitz?

12 A What do you mean?

13 Q How do you know him?

14 A We were referred to him by his
15 brother-in-law who knew he worked in this area.

16 Q So Rabbi Jacobowitz was not the
17 rabbi of your synagogue?

18 A No.

19 Q Am I using the right word? Do you
20 and your husband attend a synagogue?

21 A Yes.

22 Q And you have probably a main rabbi
23 there and others?

24 A It doesn't really work that way,
25 but there is a rabbi of a synagogue.

C. Grossbaum - Direct

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1 A Brooklyn. I believe Brooklyn.

2 Q And you said you were referred to
3 him by I think you said his brother-in-law?

4 A Yes.

5 Q Who is that?

6 A Rabbi Zalman Leib Markowitz.

7 Q Where does Rabbi Markowitz live?

8 A He lives in Munsey, New York.

9 Q How did you come in contact with
10 Rabbi Markowitz?

11 A He was involved in the community of
12 Morristown. He was the principal of the school,
13 and we were close with him, and we were discussing
14 the situation with him.

15 Q Was he the principal of Cheder
16 Lubavitch where you worked?

17 A One of them.

18 Q And what's his -- I have Markowitz.
19 What's his first name?

20 A Zalman Leib.

21 Q So you knew him from Cheder
22 Lubavitch?

23 A Yes.

24 Q Did you have discussions with Rabbi
25 Markowitz about the issue of you wanting to start

C. Grossbaum - Direct

38

1 a family?

2 A Yes.

3 Q Was he the first person whose
4 counsel you sought out on that issue, you and your
5 husband?

6 A Yeah.

7 Q Is he still one of the principals
8 at Cheder Lubavitch?

9 A No.

10 Q Did you say he lives in Munsey, New
11 York?

12 A Yes. It's like Rockland County
13 area.

14 MR. STEIN: It's up near Suffern.

15 THE WITNESS: Technically it might
16 even be Suffern. It's in one mushed area.

17 Q Are you still in contact with Rabbi
18 Markowitz?

19 A Not on a regular basis.

20 Q Do you speak to him once a year or
21 more?

22 A I would say maybe once a year.

23 Q Can you tell me -- first of all,
24 can you tell me approximately when it was that you
25 first consulted him on the issue of you and your

C. Grossbaum - Direct

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1 husband wanting to start a family?

2 A I don't remember the exact time.

3 Q Can you tell me what information
4 did you seek to gain from him about that issue?

5 A I guess just advice. Yeah, advice.

6 Q Was it advice specifically because
7 of your prior test results, or was it just general
8 advice?

9 A I don't understand what you're
10 saying.

11 Q In other words, did you seek out
12 Rabbi Markowitz and talk to him about wanting to
13 start a family because you knew you were a CF
14 carrier, or just generally because you wanted to
15 talk to him about the idea of starting a family?

16 A Specifically because we were a CF
17 carrier.

18 Q At the time that you first spoke to
19 Rabbi Markowitz about these issues, did you
20 already know that your husband also was a CF
21 carrier?

22 A Yes.

23 Q How had you learned that?

24 A When we were ready to get engaged
25 we called the organization Dor Yeshorim, and what

C. Grossbaum - Direct

40

1 they do is they take your blood work.

2 Q Do you want some water?

3 A That would be good, yes, please.

4 MR. EICHHORN: We'll take a break
5 and get you some water.

6 (Whereupon, a break is taken.)

7 Q You were in the middle of
8 answering.

9 A I said before I was in high school,
10 and he was in Yeshiva. They take your blood work,
11 but they don't tell you your results until they're
12 ready to get married, and when you're ready to go
13 get engaged -- after the couple gets engaged --
14 before you're engaged they tell you whether you
15 are compatible or not. They told us that we were
16 carriers for cystic fibrosis, so it was several
17 years after we were in high school.

18 Q I'm afraid you lost me on that.
19 Maybe I misunderstood earlier. I thought that you
20 had that testing done by Dor Yeshorim in 2000 and
21 that you learned at that time.

22 A I didn't get tested by Dor Yeshorim
23 in 2000. In 2000 it was Morristown Memorial. In
24 1998 I got tested by Dor Yeshorim.

25 Q In 1998 when Dor Yeshorim tested

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1 you, you did not learn the results then?

2 A No.

3 Q In 2000 were you and Menachem
4 considering getting married at that time?

5 A Yes.

6 Q Were you engaged yet?

7 A No.

8 Q At that point in your relationship
9 is that the point when couples would generally
10 find out the results of their testing? Is that
11 what you just told me?

12 A People find out before they go out
13 or get engaged.

14 Q By "go out" you mean date?

15 A Uh-huh, yes.

16 Q Some people will find out before
17 they even date. Other people may date and find
18 out before they get engaged?

19 A Right.

20 Q In your situation you had dated
21 already. You were serious. You were thinking of
22 getting engaged, and then you found out?

23 A Right.

24 Q From whom did you learn the results
25 of both your tests? From what organization?

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1 A Dor Yeshorim said we were not
2 compatible.

3 Q Tell me what "not compatible" means
4 in the way Dor Yeshorim uses it.

5 A When they take your blood, they
6 give you a card with an I.D. number, and before
7 you're ready to get engaged, you give them the two
8 numbers, and they tell you whether it's a match or
9 not.

10 Q When you say "match," according to
11 what criteria are you talking match?

12 A If you're both carriers I guess for
13 the same genetic condition.

14 Q Maybe you told me. Did you tell me
15 when it was you learned this information about you
16 and your husband, when you learned the results of
17 the test in which they told you you were not
18 compatible?

19 A That was in 2000.

20 Q And did you or your husband test
21 positive for any other disease or abnormality
22 other than being carriers for CF?

23 A They don't tell you if you're a
24 carrier for something. They just tell you if you
25 both are the carrier for the same condition.

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1 Q So the sum and substance of the
2 results of your testing that you learned was both
3 of you were carriers for CF, and therefore, you
4 were characterized as not compatible?

5 A That we were both -- we found out
6 that we were both carriers.

7 Q For cystic fibrosis?

8 A Yes.

9 Q Did Dor Yeshorim make any
10 recommendations to you as a result of that
11 testing?

12 A No, they don't do that.

13 Q They don't say anything from a
14 religious authority perspective of whether you
15 should or should not get married?

16 A No, they just -- that's not what
17 they do. They just -- it's like a database.

18 Q When you learned this information,
19 were you given any additional information as to
20 the significance of the fact that you were both CF
21 carriers, or just simply you're both carriers for
22 cystic fibrosis, and you're not compatible and
23 that's it?

24 A Can you explain what you're asking?

25 Q How did you find out these results?

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1 Did you call up Dor Yeshorim to find out?

2 A Yes.

3 Q Did you learn the results over the
4 phone?

5 A Yes.

6 Q When you learned the results over
7 the phone, were you simply told that you and your
8 husband were both carriers for CF, and you were
9 not compatible, or were you also told additional
10 information about the significance of those test
11 results?

12 A We were not really given much more
13 information about cystic fibrosis or anything
14 else.

15 Q When you were saying "not really
16 given much more," to me that means you were given
17 some more. My question is, what else were you
18 told?

19 A We were told that we were both
20 carriers of cystic fibrosis, and we had to do
21 research to find out what cystic fibrosis was.

22 Q Was it after that that you went to
23 Morristown and had testing redone?

24 A Yes.

25 Q Why did you do that?

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1 A Because they recommend that you do
2 that just to confirm the results.

3 Q Were the results confirmed?

4 A Yes.

5 Q Did you go to Morristown, just you
6 or your husband also?

7 A In 2000, just I went, and he got
8 retested by the organization. They took his blood
9 again.

10 Q Were the results confirmed?

11 A Yes.

12 Q Did you know all of that
13 information before you first spoke to Rabbi
14 Markowitz?

15 A Yes.

16 Q Is that why you spoke to Rabbi
17 Markowitz?

18 A Yes.

19 Q What is Rabbi Markowitz's role that
20 he would be a person that you would go to for
21 consultation in this field?

22 A He was just somebody that we were
23 close to and is connected to a lot of different
24 people and has a lot of different resources.

25 Q Does he himself get involved in

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1 issues of fertility for couples?

2 A I don't know if it's like a general
3 thing that he does. I don't know.

4 Q I assume you told Rabbi Markowitz
5 that you were both CF carriers?

6 A Yes.

7 Q What did he tell you?

8 A I don't know -- I can't really --
9 how much do you want me to -- I don't understand
10 what you want me to . . .

11 Q I'm trying to get a feeling for
12 what the discussion was, what he told you. I
13 believe you did tell me that he ended up referring
14 you to Rabbi Jacobowitz?

15 A Right, so we were just basically
16 discussing with him what our options could be,
17 what options we had, how we can go about finding
18 out what our options were, advice on what his
19 opinion on -- how we should go about finding out
20 different options. He was kind of like -- I don't
21 know the word, but someone that we were close to
22 that was an open ear that we could talk to and
23 confide in.

24 Q He told you that the person that
25 would be in the best position to possibly help you

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1 would be Rabbi Jacobowitz?

2 A Yes.

3 Q Did Rabbi Markowitz say anything to
4 you about the issue of becoming pregnant given
5 that you were both CF carriers, or did he just
6 defer on that issue completely?

7 A We spoke about -- can you explain?

8 Q Did he give you any advice?

9 A He didn't tell me what to do one
10 way or the other. He wasn't like, Do this or
11 don't do that. He was trying to help guide us to
12 make the right decision for ourselves.

13 Q I'm trying to get a little bit of
14 what that discussion was. If he tried to help
15 guide you and what decision was best for you, what
16 were you talking about? What was the issue that
17 you were concerned about?

18 A About having children obviously and
19 getting married -- you know, getting married and
20 having children and having a family and what our
21 future would be.

22 Q Did you ask him whether he knew any
23 couples similarly situated to you?

24 A Yes.

25 Q What did he tell you?

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1 don't know how long before that.

2 MR. STEIN: You can focus on it
3 right like that, how long before.

4 Q I'm not trying to trip you up. You
5 told me already that you were referred by Rabbi
6 Jacobowitz in NYU in around February or March of
7 2004, so with that date in mind, can you tell me
8 in relation to that how much before that you did
9 first meet Rabbi Jacobowitz?

10 A I don't remember exactly, but it
11 was probably two to three months before.

12 Q Did you first encounter him in
13 person or on the telephone?

14 A We spoke to him on the phone.

15 Q Did you arrange a personal meeting?

16 A Not at that time.

17 Q When you first spoke to him, I
18 would imagine you told him that you were referred
19 to him by Rabbi Markowitz. Right?

20 A Yes.

21 Q What was the rest of the
22 discussion?

23 A He basically explained what the
24 general options were, and he referred us to Dr.
25 Liccardi at NYU.

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1 Q Tell me what he told you the
2 general options were.

3 A The PGD and IVF.

4 Q Did he discuss anything else?

5 A No. We went to him basically
6 because we knew he did that work. He was involved
7 in that at NYU.

8 Q Had you learned that from Rabbi
9 Markowitz?

10 A Yes.

11 Q That's something that Rabbi
12 Markowitz told you?

13 A Yes.

14 Q When you spoke to Rabbi Jacobowitz,
15 he then talked to you about the possibility of
16 using PGD and IVF, and he referred you to Dr.
17 Liccardi?

18 A Yes. He said he works with Dr.
19 Liccardi at NYU, and they do that.

20 Q How many times had you met or spoke
21 to Rabbi Jacobowitz before you went to the NYU IVF
22 clinic?

23 A Two or three times.

24 Q In that period of time, can you
25 tell me what involvement he had with PGD and IVF?

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1 THE WITNESS: That was the only
2 reason he was there, to make sure it was mine and
3 no one else's.

4 MR. LEUCHTMAN: So he didn't
5 purport to have any quality control?

6 THE WITNESS: No.

7 MR. LEUCHTMAN: Nor was he trained
8 for that?

9 THE WITNESS: Right, he's not
10 trained for that.

11 Q In February or March of 2004 when
12 Rabbi Jacobowitz referred you to the NYU IVF
13 clinic, was that to Dr. Liccardi specifically?

14 A Yes.

15 Q What was your first contact with
16 either Dr. Liccardi or the clinic?

17 A We called to schedule an
18 appointment.

19 Q The first day you went to the
20 clinic was it to see Dr. Liccardi for an
21 appointment?

22 A Yes, it was a consultation before
23 we went.

24 Q I think according to the record it
25 was the end of March. Does that sound right to

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1 you?

2 A Yes.

3 Q Did you and your husband both go?

4 A Yes.

5 Q Do you remember that visit?

6 A Yes.

7 Q Tell me first of all roughly what
8 time of day was it.

9 A I don't remember.

10 Q And about how long did that visit
11 last?

12 A Probably about 45 minutes to an
13 hour.

14 Q Did you speak to anyone at that
15 visit other than Dr. Liccardi, other than to a
16 nurse to say that you were there?

17 A We spoke to -- I don't know if it
18 was that day or on a subsequent visit that we
19 spoke to nurses or whatever.

20 Q On that first visit tell me what
21 was discussed.

22 A He basically discussed the IVF
23 process.

24 Q About how long did that discussion
25 of the procedure last?

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1 A I just remember that the whole
2 meeting was an hour, 45 minutes. I don't remember
3 the length of that part of the discussion.

4 Q When you say he was discussing the
5 IVF process, are you talking about the detail of
6 how it works, what the steps are, what you do,
7 what they do?

8 A Yes.

9 Q Was your husband with you and
10 taking part in that?

11 A Yes.

12 Q Did either of the two of you have
13 any questions for him?

14 A Yeah.

15 Q A lot of questions? A few
16 questions?

17 MR. STEIN: What's your idea of
18 those very specific terms, "a lot" and "a few"?

19 Q Did you ask a few questions or did
20 you have more than ten?

21 A I don't remember the exact number,
22 but there were several -- a lot of questions. We
23 wanted to know all about it.

24 Q I can't expect you to be able to
25 tell me now exactly what he told you, but I would

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1 like you to tell me to the best of your memory
2 what he told you when he described this whole
3 process for you and your husband.

4 A He spoke about what IVF was. He
5 spoke about what I would have to do before, the
6 different hormones and different injections that I
7 would have to take and what was involved in the
8 egg retrieval, what was involved in making the
9 embryo, what was involved in implanting the embryo
10 back into me, so all the details of what was
11 involved in doing in vitro fertilization, the
12 chances of it being a success and all of that.

13 Q Do you remember any of the
14 questions that you had?

15 A No.

16 Q Was there any other discussion?

17 A I don't understand.

18 Q Any other information that he
19 conveyed to you or any subjects that were
20 discussed other than what you just told me?

21 A We spoke about what he said, that
22 we would have a meeting -- a phone meeting with
23 Dr. Hughes, and he was just explaining to us how
24 the PGD worked, and it could be we discussed
25 things totally unrelated, but I don't specifically

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1 remember those conversations. Like it could be
2 there was some small talk. I just don't remember.

3 Q What did he tell you about Dr.
4 Hughes' role?

5 A That Dr. Hughes did the PGD.

6 Q Did he explain what PGD was?

7 A He explained it very briefly, but
8 he said we would speak to Dr. Hughes, and he would
9 explain more in detail what was the PGD.

10 Q Did he tell you anything about Dr.
11 Hughes?

12 A Not really. Explain what you mean
13 by "about Dr. Hughes."

14 Q You were referred to the NYU IVF to
15 Dr. Liccardi, and now you're sitting down with Dr.
16 Liccardi.

17 A Right.

18 Q He's describing this process, and
19 he's saying that part of it involved PGD testing
20 to be done by some other person, by some other
21 place, Dr. Hughes. I'm asking you did he tell you
22 anything about him other than just a name and a
23 location?

24 A He said that Dr. Hughes was the
25 doctor that they used for their PGD, and he was in

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1 Michigan, and they overnighted the embryo to him,
2 and he did whatever -- all the stuff that he did,
3 and he overnighted it back to him, and that's who
4 they worked with.

5 Q What you just talked to me about
6 for these couple of minutes, what was discussed at
7 this meeting with Dr. Liccardi, that lasted about
8 an hour?

9 A The meeting lasted probably about
10 an hour. I don't remember how long the part of
11 the conversation about Dr. Hughes was.

12 Q I'm not just talking about Dr.
13 Hughes, but the meeting with him in which he
14 described the IVF process, answered your
15 questions, had mentioned Dr. Hughes' role, that
16 meeting took about an hour?

17 A Yes.

18 Q And we have just talked about those
19 issues now for a couple of minutes?

20 A Right.

21 Q And it's accurate to say, isn't it,
22 that there was a lot of detail provided to you in
23 that meeting that you and I have not gone over
24 just now?

25 A Right.

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1 would make it okay?

2 A If there's danger to the mother's
3 life. I'm not -- I'm not really an expert on it,
4 but I know some cases if they know that the child
5 won't survive past -- for a while and it will be
6 in a lot of pain, they might say it's okay. I'm
7 not like an expert in the allowances of having an
8 abortion, but I think those are the two main
9 factors.

10 Q Did you seek information and
11 guidance on that issue from anyone during this
12 process?

13 A Yes.

14 Q Who?

15 A Rabbi Tendler.

16 Q Where is Tendler from?

17 A He's also from the Munsey area.

18 Q How did you get his name?

19 A I believe also from Rabbi
20 Markowitz.

21 Q And what issues did you discuss
22 with Rabbi Tendler?

23 A What he thought our best options
24 according to Jewish law were to get pregnant.

25 Q Out of what choices?

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1 A Getting pregnant naturally, getting
2 pregnant and having an abortion, and doing the
3 PGD.

4 Q So those three choices were
5 discussed with Dr. Tendler?

6 A Yes.

7 Q What advice did he give you?

8 A His advice was that the best option
9 according to Jewish law would be the PGD.

10 Q If you and your husband were to
11 decide to get pregnant naturally, it was your
12 understanding that you would have a one-in-four
13 chance that your child would have CF. Correct?

14 A Yes.

15 Q So if you decided to get pregnant
16 naturally and learned during your pregnancy that
17 your child was going to have CF, Jewish law
18 wouldn't prevent you from giving birth to that
19 child, would it?

20 A No.

21 Q So you're certainly free under
22 Jewish law to have that baby and raise that baby
23 with CF. Correct?

24 A Yes.

25 Q On the other hand, if you learned

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1 during the pregnancy that your child was going to
2 have CF, are you saying that Jewish law would not
3 permit you to have an abortion?

4 A It depends on the circumstances.

5 Q And in these circumstances, the
6 circumstance of you and your husband and knowledge
7 that your child was going to be afflicted with CF,
8 is it your testimony that Jewish law would prevent
9 you from having an abortion?

10 A Yes.

11 Q And who told you that?

12 A Rabbi Tendler.

13 Q Did you seek counsel from anyone
14 else on that issue?

15 A No.

16 Q Is he the only person you discussed
17 that issue with ever before giving birth to Rosie?

18 A Probably not the only person I
19 discussed the issue with.

20 Q Well, did you discuss it with any
21 other rabbis for their expertise and guidance on
22 that issue?

23 A No.

24 Q Am I correct that you never spoke
25 to your own rabbi about that issue, the rabbi at

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1 and what happened next?

2 A He had us set up a phone meeting
3 with Dr. Hughes.

4 Q Phone meeting with him also or just
5 Dr. Hughes?

6 A No, just Dr. Hughes.

7 Q How long after your consultation
8 with Dr. Liccardi did the phone conference with
9 Dr. Hughes take place?

10 A It was within a few weeks.

11 Q Tell me what the discussion was.

12 A What exactly do you want to know?

13 Q I'd like to know what was said.

14 A He told us about what the PGD was
15 and what he did and how -- just how he did the
16 PGD, you know, the scientific things behind it.

17 Q Do you remember -- I assume you and
18 your husband were both involved in this?

19 A Yes.

20 Q Do you remember whether either of
21 you had any questions for him?

22 A Yes.

23 Q Yes --

24 A We had questions for him.

25 Q And did he answer them to your

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1 satisfaction?

2 A Yes.

3 Q Can you tell me about how long that
4 conversation lasted?

5 A About 45 minutes.

6 Q And would it be accurate to say
7 that most of that 45 minutes was spent with him
8 talking and you listening, rather than you and
9 your husband talking and him listening?

10 A It was a mixture of him talking, us
11 asking questions, him answering the questions.

12 Q Do you remember any of the
13 questions that you had for him?

14 A Some of them.

15 Q Why don't you tell us what you
16 recall asking?

17 A I recall asking about what the cost
18 of this PGD was. I remember some questions about
19 the actual process of doing the actual PGD, about
20 the chances of it being a success and just in
21 general what was involved in doing the PGD.

22 Q Had you written down any questions
23 in advance to ask so you wouldn't forget to ask
24 them when you were on the phone?

25 A I think so.

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1 Q Do you happen to have those
2 questions that you wrote down?

3 A No.

4 Q Do you have any, you or your
5 husband, have any notes, papers that you compiled
6 during the course of these events?

7 A Not anymore. I mean, no. As soon
8 as I got pregnant, I just got rid of everything.

9 Q Can you tell me any more
10 specifically what Dr. Hughes told you about the
11 PGD, the type of technology it is, its success
12 rate, those kinds of things?

13 A I'm not so clear on the technology,
14 but he explained how they create this DNA. They
15 take -- remove specific things from the embryo to
16 check the DNA to see if it was -- if it had the CF
17 gene, and that they did this -- they created it
18 specifically to look for our mutations. In
19 reference to the success rate, he said that he had
20 been doing it for about 14 years, and in hundreds
21 of cases he only had 10 or 11 errors and that the
22 success rate was very high. He mentioned that
23 it's a very quick process, that they get it and
24 they send it back overnight because it's back at
25 NYU in time to be implanted, so different things

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1 like that.

2 Q And so he told you in that first
3 conversation with him that there had been errors
4 made in the past?

5 A He said there had been errors, but
6 it was -- he had a very high success rate.

7 Q And on the subject of errors, do
8 you remember what else he told you about that? If
9 an error does occur what has been done in the
10 past?

11 A He said that some people aborted
12 and some people had the baby.

13 Q Did he tell you any procedures that
14 were in place to help find any errors?

15 A Yes.

16 Q What did he tell you?

17 A The CVS and amniocentesis.

18 Q What did he tell you about those?

19 A That people do it to see if the
20 baby had whatever it was that they were doing the
21 PGD for.

22 Q He told you that those two
23 procedures are used to check to see whether or not
24 the baby is okay, or whether there is a problem
25 after the PGD has been done?

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1 stamina. We're going to be here a long time.

2 A Okay.

3 Q So after that first telephone
4 conversation with Dr. Hughes, how was it left with
5 him?

6 A That we should make a decision
7 about what we wanted to do, if we wanted to go
8 ahead with the IVF and PGD, and I believe at that
9 conversation we told him we did want to go ahead
10 with it.

11 Q You told him that you did?

12 A Yes.

13 Q So then what happened next?

14 A Then we contacted NYU, and they
15 scheduled like an orientation-type meeting.

16 Q And about how long later was that
17 after the conversation with Dr. Hughes?

18 A I believe that was in May.

19 Q Was this an orientation meeting
20 just for you and your husband or were you part of
21 a bigger group?

22 A It was supposed to be a bigger
23 group, but I think in the end there was only one
24 or two other couples there.

25 Q Who from NYU was there?

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1 Q Do you remember signing various
2 consent forms?

3 A Yes.

4 Q Do you remember reading those
5 consent forms before you signed them?

6 A Yes.

7 Q Do you remember reading them at
8 home in addition to reading them at the clinic?

9 A No. I mean, I don't remember for
10 sure.

11 Q I'll represent to you that the
12 records indicate that the consent forms were given
13 to you on that visit of the 31st to take home.
14 Would you have any reason to dispute that?

15 A No.

16 Q Tell me about the orientation
17 meeting.

18 A The orientation -- they had like a
19 PowerPoint presentation with different information
20 about IVF and your age and what your chances were
21 of successfully getting pregnant and how to inject
22 yourself with the needles and different hormones
23 you have to take, and at what point you would have
24 to come in for blood work and what time for egg
25 retrieval, what work you would have to do to come

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1 in for implantation, after that how you would come
2 in to test your hormonal levels and different
3 things like that. It just went through the
4 step-by-step process of what IVF was.

5 Q Was this a more in-depth discussion
6 of the same things that Dr. Liccardi had told you
7 about at the first meeting?

8 A Yes.

9 Q Did this meeting address at all the
10 PGD aspect of things or just IVF if you remember?

11 A It was just IFV, if I recall.

12 Q Did you speak to that other couple
13 that was there at all?

14 A No.

15 Q You don't remember if they were
16 just IVF or they were PGD also?

17 A I think we spoke briefly but not
18 like intense conversations. She was an older
19 woman.

20 Q Do you remember how long that
21 orientation meeting lasted?

22 A I don't remember the exact time,
23 but it was a while. It was definitely a few hours
24 I think. I think. I don't remember exactly.

25 Q Did you say it was a PowerPoint

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1 presentation?

2 A I don't remember the exact computer
3 program that they used, but it was --

4 Q On a screen?

5 A On a screen, yeah.

6 Q Do you remember whether you and
7 your husband had any questions?

8 A Yes, we definitely had questions.

9 Q Do you remember any of the
10 questions that you had?

11 A Not specifically, but at that time
12 they showed us how to give ourselves the
13 injections, and we had to try it on different --
14 we had to try it on these squishy things, so there
15 were questions related to that. It was questions
16 related to -- you know, just to the whole meeting.
17 I don't remember.

18 Q You had to give yourself injections
19 of what?

20 A Hormones so that you can get your
21 body ready to do the in vitro fertilization.

22 Q Did this nurse give the whole
23 presentation?

24 A I don't remember. Vaguely I
25 remember someone coming in to show us how to use

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1 the needles and showing us how to use the
2 hormones, and I remember there were like two
3 sessions, but I don't remember the details of
4 that.

5 Q At that point in time you had
6 spoken to Dr. Liccardi, and you had spoken to Dr.
7 Hughes. Did you have any -- I'm going to use the
8 phrase any burning questions in your mind,
9 anything that you were specifically concerned
10 about and finding out the answers to at that time?

11 A At that time?

12 Q Yes.

13 A No. At that point most of my
14 questions were answered.

15 Q What I mean is right before that
16 meeting, when you knew that you were going to the
17 orientation meeting, did you and your husband have
18 in your mind, "We really want to find out the
19 answer to this or we want to ask about that"?

20 A No, sir, all those questions were
21 answered either on the phone with Dr. Hughes or in
22 the meeting with Dr. Liccardi.

23 Q The questions that you asked at the
24 orientation meeting, they were questions that came
25 up at that time based upon what was being

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1 presented to you?

2 A Yes.

3 Q Did you have any questions or
4 concerns in your mind, you or your husband, at
5 that time as to whether you wanted to go through
6 with this?

7 A No.

8 Q You knew you wanted to?

9 A Yes.

10 Q And what happened after that?

11 A Once we decided to go ahead with
12 that and we learned how to use the needles, they
13 gave you a starting point as to when you were
14 supposed to start giving yourselves the specific
15 hormone. I don't remember if it was Lupron or
16 progesterone, something like that, and then you
17 started the injections, and they told you exactly
18 what date and -- they were very specific with the
19 instructions about when you're supposed to start
20 and when you're supposed to stop one thing and go
21 to the next hormone.

22 Q Is there any problem in your
23 religion with injecting yourself with hormones?

24 A No. I mean, no.

25 Q Not that you know of?

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1 four, Section D now, it says, "I and my partner
2 understand that there is no guarantee that this
3 procedure will result in a successful pregnancy,
4 although the members of the PIVF team hope that a
5 pregnancy will result from this procedure."

6 So you knew very clearly after speaking to
7 Dr. Liccardi and reading this document before you
8 signed it that the IVF procedure may not work and
9 you might not get pregnant?

10 A Yes.

11 Q Two paragraphs down from that, it
12 says, "However, should a pregnancy result from
13 this procedure, I and my partner understand that
14 the pregnancy may need to be monitored by weekly
15 hormone determinations of the maternal blood and
16 by ultrasound examination. We understand that
17 even if pregnancy is successfully established, the
18 pregnancy will be subject to all the risks and
19 complications of a natural-occurring pregnancy,"
20 and then it goes on to list several risks.
21 Correct?

22 A Yes.

23 Q Then it says, "The risk of the
24 development of an abnormal fetus is at this time
25 unknown. From animal experimentation and from

C. Grossbaum - Direct

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1 observations of the abortion of abnormal fetuses
2 in the human, although it is not known, it is now
3 believed that the IVF-ET procedures, including
4 ICSI and assisted hatching, do not have any
5 greater risk of abnormal fetal development than
6 occurs in nature. Thus, although IVF births to
7 date have not demonstrated an increased incidence
8 of fetal abnormalities compared to non-IVF babies,
9 we understand that the IVF team cannot guarantee
10 the normalcy of any infant resulting from this
11 procedure."

12 You read that. Correct?

13 A Yes.

14 Q You understood that basically what
15 it was saying was while there's been some testing,
16 they can't guarantee that your baby will come out
17 okay?

18 A Yes.

19 Q And you accepted that?

20 A Yes.

21 Q So you understood when you agreed
22 to go forward with this that your baby may end up
23 with a problem in spite of all the technological
24 tests that were being used. Right?

25 A Yes.

C. Grossbaum - Direct

111

1 okay -- if it had been okay to do an amnio and
2 CVS, we wouldn't do this or make the determination
3 to do the IVF pregnancy. I was doing the IVF
4 specifically because we would have a much greater
5 chance of not having CF.

6 Q In fact, you were doing the PGD to
7 reduce the chances of having a baby with CF?

8 A Yes.

9 Q You knew that PGD wouldn't insure
10 that you wouldn't have a baby with CF?

11 A It wouldn't ensure, but we believed
12 that the risks were very minimal.

13 Q The chances of it happening were
14 much less. That was the plan?

15 A Significantly less.

16 Q But it could happen?

17 A Possibly, yes.

18 Q Well, Dr. Hughes specifically told
19 you that in 10 or 11 cases over the years there
20 had been errors made in the PGD testing because
21 it's not perfect. Correct?

22 A Right. He said in 14 years in
23 hundreds of cases.

24 Q Stick with me.

25 A But he also stressed that it was

C. Grossbaum - Direct

112

1 very little risk.

2 Q In hundreds of cases, 10 or 11
3 times the technology made an error. That's what
4 he told you?

5 A Yes.

6 Q Did you appreciate at that time
7 when he was saying it to you that those 10 or 11
8 times were 10 or 11 families?

9 A Yes.

10 Q That they were people who had made
11 the same decision you had made to undergo this
12 testing to reduce their chances, but that it could
13 still happen, and while many hundreds or some
14 hundreds of people were happy, this 10 or 11
15 families had it happen to them and that it didn't
16 work. You understood that?

17 A I understood that.

18 Q You knew that while the chances
19 were it wouldn't happen to you, it could happen to
20 you?

21 A Yes.

22 Q In your mind are you saying that
23 just getting pregnant, given that you're both CF
24 carriers, just getting pregnant and then going for
25 amnio is the same as having PGD testing done to

C. Grossbaum - Direct

114

1 A The last page?

2 Q Subsection G, I'm sorry. It says,
3 "I and my partner confirm the nature of in vitro
4 fertilization and embryotransfer with ICSI and/or
5 assisted hatching has been explained to us
6 together with the known risks."

7 That was true. You had that discussion.
8 Correct?

9 A Yes.

10 Q "We understand the explanations
11 that has been given. We've had the opportunity to
12 ask any questions we might have, and those
13 questions have been answered to our satisfaction."

14 That was also true. Correct?

15 A Yes.

16 Q It says at the end, "We understand
17 that we may elect not to continue with this
18 procedure at any time and that this decision would
19 not affect present or future medical care and
20 treatment."

21 That is correct?

22 A Correct.

23 Q In other words, if you wanted to
24 change your mind and not go forward with it, you
25 could do it. No one was making you continue with

C. Grossbaum - Direct

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1 any detail. One thing -- basically one thing the
2 consent form says is that you agree to have the
3 fertilized embryos frozen, and there's no
4 guarantee that they'll survive the freezing
5 process.

6 A Yes.

7 Q You understood that?

8 A Yes.

9

10 (Addendum to IVF-ET Transfer Consent,
11 Embryo Biopsy and Preimplantation Genetic
12 Diagnosis dated 6/4/04, marked as Exhibit
13 Grossbaum-3 for Identification.)

14

15 Q This is a consent form that we've
16 marked as Grossbaum-3, and it's entitled,
17 "Addendum to IVF-ET Transfer Consent, Embryo
18 Biopsy and Preimplantation Genetic Diagnosis." If
19 you look, is that your signature and again after
20 that your printed name and the date that you
21 signed it?

22 A Yes.

23 Q And that's June 4, 2004?

24 A Yes.

25 Q I'm going to go through a couple of

C. Grossbaum - Direct

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1 things on this consent, maybe a few more than a
2 couple. On the first page, the first main
3 paragraph talks about that PGD can detect numerous
4 genetic disorders, and when successful it reduces
5 the chance of giving birth to a child afflicted
6 with a hereditary disease. Is that right?

7 A Yes.

8 Q You read this document before you
9 signed it. Correct?

10 A Yes.

11 Q And it also -- as with the other
12 consent forms, each page has a line at the bottom
13 where it appears that you initialed it and you
14 dated it. Is that correct?

15 A Correct.

16 Q And was that initialed at the end
17 of each page by you, an indication that you had
18 read that page?

19 A Yes.

20 Q If you look at page three,
21 paragraph two, it says, "We understand that
22 because PGD is a new procedure, a major risk is
23 that the procedure may not be successful."

24 You read that and you understood that.
25 Correct?

C. Grossbaum - Direct

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1 A Yes.

2 Q It then says, "The genetic analysis
3 may fail or be incorrect, although in PIVF's
4 experience with 60-plus patients to date, the
5 accuracy has been greater than 90 percent."

6 You read that?

7 A Yes.

8 Q You understood that?

9 A Yes.

10 Q Did you have any questions for
11 anyone or comments about that when you read it?

12 A Our questions and comments were
13 addressed by Dr. Hughes when we had the
14 conversation with him.

15 Q So you had your conversation with
16 Dr. Hughes before you read and signed this
17 document. Correct?

18 A Yes.

19 Q So was your -- are you saying it
20 was your understanding from Dr. Hughes that there
21 was a success rate better than 90 percent?

22 A Yes.

23 Q And can you be any more specific
24 about what you said before, that there had been
25 hundreds of people and 10 or 11 errors?

C. Grossbaum - Direct

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1 A Yes. He said that although he
2 can't guarantee it because nothing is guaranteed,
3 that it was very unlikely that it would be a
4 mistake, and he also specified within cystic
5 fibrosis, because we had more common mutations,
6 that it should be even less difficult to do it
7 properly because it was a more common condition,
8 more common mutation, and that he wasn't going to
9 guarantee anything because nothing is guaranteed,
10 but that the risks of it not being a success were
11 very slim, and it was a very high chance of it
12 being successful.

13 Q So your testimony is that Dr.
14 Hughes essentially said to you that you had common
15 mutations so that there was a better chance of
16 success than other cases?

17 A I didn't say he said because of the
18 mutations it was going to be less of a risk. He
19 was just saying that it shouldn't be a difficult
20 thing to do because we had a common mutation, and
21 I guess what he felt was that there was a very
22 slim chance of him being incorrect, and that he
23 felt very optimistic that it would be successful.

24 Q Did Dr. Hughes say to you and your
25 husband that yours was a complicated case for him?

C. Grossbaum - Direct

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1 A No. He was very optimistic about
2 the procedure.

3 Q And then looking back, picking up
4 where we were on this consent form, it says, "It
5 is possible that a normal embryo may be
6 incorrectly identified as affected and not
7 transferred as a result. Conversely, we
8 understand that an affected embryo may be
9 incorrectly identified as normal, leading to the
10 possibility of an affected fetus and child."

11 You read that and understood it. Correct?

12 A Yes.

13 Q And you said Dr. Hughes was
14 optimistic that there would not be an error, but
15 you clearly understood that there was a
16 possibility of an error, and it was possible that
17 your child could be afflicted with CF?

18 A We understood that it was a very
19 small possibility.

20 Q And you accepted that risk?

21 A Yes, based on believing that it was
22 a very small possibility.

23 Q And if it turned out that it
24 happened with you that you were the one in however
25 many where the error was made, what was your plan?

C. Grossbaum - Direct

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1 Q It says in number three, "There's a
2 risk of a multiple gestation, miscarriage, ectopic
3 pregnancy, abnormalities in the fetus/child such
4 as but not limited to congenital anomalies,
5 embryonic fetal death or stillbirth."

6 You understood that those risks were all
7 possible from this?

8 A Yes.

9 Q It also said that fertilization may
10 not occur?

11 A Yes.

12 Q Or the embryo may for some reason
13 not develop?

14 A Yes.

15 Q Or it may grow, but the growth may
16 be abnormal?

17 A Yes.

18 Q You knew those were risks, and you
19 accepted them?

20 A Yes. Do you want me to say
21 anything else or just yes or no?

22 Q Is there anything else to say on
23 that?

24 A No, just that whenever -- whenever
25 the topic of risk was discussed, I was always like

C. Grossbaum - Direct

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1 reassured this is a risk, but it's just a very
2 slight possibility. It's a risk, but it's a
3 slight possibility. It was never like there is a
4 really big chance of this happening.

5 Q Right.

6 A There was a lot of reassurance that
7 it's very unlikely, a small chance of it
8 happening, but we just -- it's a possibility that
9 you need to be aware of, but it's very unlikely.

10 Q Then it says in number six, "There
11 is a possibility that a misdiagnosis may be made
12 on any one of the embryos prior to intrauterine
13 transfer or that the actual process of testing may
14 adversely affect the development of the fetus."

15 A Yes.

16 Q You read and understood that?

17 A Yes.

18 Q So you knew that although Dr.
19 Hughes was optimistic and had good experience, you
20 knew they were telling you that a misdiagnosis
21 could be made?

22 A Yes.

23 Q And it says here, "There is an
24 unknown risk for congenital abnormalities or other
25 problems with the newborn."

C. Grossbaum - Direct

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1 you would have the implantation of the most viable
2 embryos. Correct?

3 A Right. That's what we were told to
4 do basically.

5 Q After a few days did a phone call
6 come?

7 A Yes.

8 Q Tell me what happened.

9 A They said -- they told us what day
10 to come in for implantation.

11 Q Do you remember what day that was?

12 A No.

13 Q According to the records, it was
14 July 19th, which would have been five days after
15 the egg retrieval. Does that sound right?

16 A Yes.

17 Q Tell me what happened.

18 A They told us to come for the
19 implantation. They said some of the embryos that
20 he tested that were good embryos had cystic
21 fibrosis, and there were some good ones that did
22 not have cystic fibrosis but they were carriers
23 for CF. Did we want to use them? We said yes,
24 and they implanted me with two I believe, two
25 embryos, and they said both of them were carriers

C. Grossbaum - Direct

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1 for CF.

2 MR. EICHHORN: Can you read her
3 answer back slowly?

4 (Whereupon, the previous answer is
5 read by the Reporter.)

6 Q Who had the discussion that you
7 related to us?

8 A Dr. Liccardi.

9 Q Was anyone else present for that
10 discussion other than Dr. Liccardi and you? Was
11 your husband there?

12 A Yes, I believe he was.

13 Q Anybody else present?

14 A I don't remember.

15 Q And when Dr. Liccardi said that
16 there were some good embryos that were CF carriers
17 and asked whether you wanted to go ahead with
18 those, did you have an understanding of what a CF
19 carrier was?

20 A Yes. I'm a CF carrier. It just
21 means that you carry the gene for CF.

22 Q So in other words, it was your
23 understanding that Rosie could be a CF carrier
24 such as you or your husband?

25 A Correct.

C. Grossbaum - Direct

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1 Q And was there any further
2 discussion about that issue, other than what you
3 just relayed to me now? Did you have any
4 questions?

5 A I don't think I had any specific
6 questions. I knew what it meant to be a CF
7 carrier.

8 Q So it was your understanding that
9 according to the testing that Dr. Hughes' lab had
10 done, that the two embryos that they were going to
11 implant in you were both CF carriers?

12 A Yes, and I said as long as it's
13 just a carrier for CF, then that's fine for me. I
14 don't care if she's a carrier for the gene.
15 Everybody is a carrier for something.

16 Q Anything else to that discussion
17 that you haven't told us?

18 A I mean, I think he just spoke
19 specifically about what he was going to do, what
20 the procedure was, how long it would take, but
21 that's it. That's pretty much it.

22 Q Was the implantation done that day?

23 A Yes.

24 Q Did you ever see any written report
25 from Dr. Hughes' laboratory about his genetic

C. Grossbaum - Cross by Mr. Leuchtman

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1 a document that she prepared, so I would object to
2 questions which contain within them substance of
3 facts that are not within her knowledge.

4 Q You reviewed this, and I assume it
5 refreshed your memory about your discussion with
6 Mark Hughes. Correct?

7 A Correct.

8 Q I described this as a checklist.
9 Do you understand that has the same function? Do
10 you agree that that's what it is, whether or not
11 you agree with all the things Dr. Hughes checked
12 off?

13 A Yes.

14 Q Did he tell you that he and his lab
15 were not your physicians?

16 A Yes.

17 Q Did he tell you that they're
18 scientists who try to develop a complicated
19 single-cell test so the preimplantation genetic
20 diagnosis can be used?

21 A Yes.

22 Q Did he say it involved designing
23 new DNA probes?

24 A Yes.

25 Q Did he tell you this it was not a

C. Grossbaum - Cross by Mr. Leuchtman

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1 perfect technology?

2 A Yes.

3 Q Did he tell you it was an
4 experimental process, that there have been errors
5 by virtually all groups performing this technology
6 including his group, and that the objective is to
7 lower your risk from 25 percent, but lowering it
8 to zero is not realistic or possible?

9 A Yes.

10 Q Did he tell you it's important that
11 you understand technology like this can fail, that
12 zero risk is expected, not promised, not possible
13 in one cell, one gene, one to two type, overnight
14 testing?

15 A Yes.

16 Q Did he tell you it would not be
17 truthful to suggest that his clinic or he are
18 perfect and that the technology has not produced
19 errors because neither of those would be a true
20 statement?

21 A Yes.

22 Q Did he tell you you didn't
23 necessarily need preimplantation diagnosis, that
24 you could get pregnant and assume the risk for the
25 disease, being cystic fibrosis?

C. Grossbaum - Cross by Mr. Leuchtman

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1 A Yes.

2 Q Did he tell you because single-cell
3 testing overnight, pushing diagnostic technology
4 to its limits theoretical and practical, it's
5 imperative that should a pregnancy ensue
6 conventional prenatal testing, CVS at around ten
7 weeks or amniocentesis at around 15 or 16 weeks is
8 necessary? I'm asking did he tell you that. I'm
9 not asking for your reaction.

10 A I don't know if he said that
11 necessarily, but I remember discussing this.

12 Q Did he say it was imperative to do
13 this, that CVS or amniocentesis be done?

14 A I don't remember him saying it was
15 imperative. He said that this is what people do
16 to ensure that the baby does not have that genetic
17 condition.

18 Q Did he tell you that this was an
19 experimental technology, that there is some risk,
20 no matter how well it's done, of just failure of
21 the technology?

22 A Yes.

23 Q Did he ask you as it says on this
24 form, "Are all your questions answered," and was
25 the answer, "Yes, thank you," from apparently your

C. Grossbaum - Cross by Mr. Leuchtman

175

1 because I don't know what the odds are. I don't
2 know what that has to do with.

3 Q Hughes says, "Remember you can get
4 pregnant and have a test like CVS or amnio."

5 A I think he said getting pregnant
6 naturally and just winging it.

7 Q And your husband said he doesn't
8 like those odds?

9 A Of just getting pregnant naturally
10 and winging it, the 25-percent chance.

11 Q At that point in the conversation,
12 nobody voiced any objection to the amnio?

13 A I don't know at what point in the
14 conversation we mentioned it, but we did mention
15 that CVS and amnio is not an option.

16 Q He says on the third page, "There
17 have been errors in PGD in the past, even in CF
18 testing, cystic fibrosis. We've had 11 errors in
19 14 years and hundreds of families. It's awful
20 when it does"?

21 A Yes.

22 Q Did he describe medicine as an art
23 and not a perfect science?

24 A Yes.

25 Q There's a line right under that

C. Grossbaum - Cross by Mr. Leuchtman

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1 "Evans," question mark, means.

2 MR. LEUCHTMAN: He wouldn't
3 document it -- that's correct. I'm helping her to
4 help herself.

5 Q Where? Is there anything that even
6 suggests an opposition to an amnio in this
7 document?

8 A No.

9 Q Did he tell you there could be a
10 failure of the technology that can just happen
11 despite everybody's best efforts and without
12 anybody doing anything wrong?

13 A Yes.

14 Q On page four, Embryo Donation, it
15 says, "They want to think about this more."

16 Do you know why you and your husband opted
17 to ruminate on whether any embryos were going to
18 be donated?

19 A I guess what he was asking was if
20 we wanted to donate the embryos that we weren't
21 using to research, and we didn't know at that time
22 what we wanted to do about that. I think that we
23 signed that we did not want them to go to
24 research.

25 Q Was that for reasons having to do

C. Grossbaum - Direct

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1 concrete the facts of our case as it relates to
2 the law in a wrongful birth/life case. That's
3 what I intend to ask her.

4 MR. STEIN: Can you show me the
5 law?

6 MR. EICHHORN: Can I show you the
7 law?

8 MR. STEIN: That you want to ask
9 her about.

10 MR. EICHHORN: Well, the law is --

11 MR. STEIN: Which questions that
12 you're --

13 MR. EICHHORN: Well, I don't know
14 that I need to tell you exactly the question, but
15 the law is 5.50(f).

16 MR. LEUCHTMAN: Was that a jury
17 instruction?

18 MR. EICHHORN: The model jury
19 charge, New Jersey model jury charge.

20 MR. LEUCHTMAN: 5.50(f)?

21 MR. EICHHORN: 5.50(f).

22 MR. STEIN: I think that this will
23 be answered by her questions that she's already
24 answered, but that's fine.

25 MR. EICHHORN: Okay. It probably

C. Grossbaum - Direct

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1 you and your husband had a higher risk of having
2 a CF baby than most PGD patients in your
3 situation, what would you have done?

4 A I probably wouldn't have implanted
5 the embryo.

6 Q And could I ask you --

7 A But, I, you know, it's really hard
8 to answer that question now because I don't know
9 that can happen.

10 Q I understand. You're trying to go
11 back and figure out what you would have done.

12 A Right. So I would -- I can only
13 tell you on what I would think. You know, I
14 don't know.

15 Q Well, you knew that if you and your
16 husband had a baby naturally your chances of
17 having your child be a CF child were 25 percent,
18 right?

19 A Right.

20 Q You knew that undergoing this PGD
21 testing, the purpose of it was to greatly reduce
22 that figure below 25 percent?

23 A Right.

24 Q And your information from
25 Dr. Hughes, that you received from Dr. Hughes,

C. Grossbaum - Direct

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1 will take two minutes but certainly less than
2 five.

3 Q Okay. Are you ready?

4 A I'm ready.

5 Q In your Interrogatory answers, and
6 we did touch on this last time, you mentioned you
7 allege that the people at NYU failed to advise
8 you that you were at an increased risk for having
9 a CF baby. Do you recall that being in your
10 Interrogatory answers?

11 A Yes.

12 Q Here's my question: The day of the
13 implantation your discussion was with Dr.
14 Luccardi, correct?

15 A Correct.

16 Q And this was after the PGD results
17 came back from Dr. Hughes' lab, right?

18 A Right.

19 Q On that day, you had a discussion
20 with Dr. Luccardi and you told us about that last
21 time. Do you remember that?

22 A Yes.

23 Q Here's my question: If Dr.
24 Luccardi had said to you that, based upon the
25 interpretation of your particular embryos, that

C. Grossbaum - Direct

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1 indicated that the risk of them making a mistake
2 was about how much?

3 A It was in the high 90s, 97, 98,
4 like that that would be successful.

5 Q So the chances of an error were
6 what, 2 or 3 percent? Is that what you're
7 saying?

8 A Right.

9 Q So my question is, if you knew that
10 your chances were not as good as 97 or
11 98 percent --

12 A Right.

13 Q -- but far better than the
14 25 percent if you did it naturally, what would
15 you have done?

16 A If I was told that there was a
17 chance, a greater chance than what we had
18 originally understood, I would probably not have
19 implanted the embryo.

20 Q So would you have decided, you and
21 your husband, not to have any children?

22 MR. STEIN: Well, that's
23 objectionable. That question now asks her to
24 speculate about the entire future after that and
25 that's what the question asked. So I object to

C. Grossbaum - Direct

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1 the question.

2 Q Well, okay. You can answer it. He
3 objected, made a legal objection, which he has a
4 right to do. Do you want the question read back?

5 A Yeah, because I don't understand
6 exactly what you're asking.

7 Q Let's read it back and if you don't
8 understand it after you hear it again, let me
9 know.

10 (Last question is read back by the
11 Reporter as follows:

12 "QUESTION: So would you have
13 decided, you and your husband, not to have any
14 children?")

15 A Ever, not to have ever just because
16 of that one embryo?

17 Q Well, my question is if you're
18 saying that, because of the result, that you had
19 a higher chance of an unsuccessful -- that was a
20 bad start.

21 My question is you just said you think you
22 probably would not have implanted the embryo.

23 MR. STEIN: After.

24 A If they told us that the embryo had
25 a problem?

C. Grossbaum - Direct

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1 the increased risk that was described here.

2 MR. EICHHORN: Okay. That's your
3 objection.

4 MR. STEIN: That's my objection.

5 MR. EICHHORN: And you made it.

6 Q Now you can answer.

7 A I need clarification on the
8 question. Are you asking that question based on
9 that specific occasion or in general? That's why
10 I'm not clear.

11 Q What I'm asking you is --

12 A What I'm answering is, based on
13 that time, if they told me we're not so sure of
14 your success rate, then I would have made a
15 decision based on that experience. I'm not
16 answering forever. I'm just saying I'm answering
17 that occasion, that time.

18 Q And this is the last part I have
19 and I'm finished with this, you said that the
20 success rate was 97 or 98 percent, to your
21 recollection, right?

22 A Right.

23 Q If, because of your embryos, if
24 your success rate, instead of being 97 or
25 98 percent, was more like 90 percent, what would

C. Grossbaum - Direct

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1 Q No.

2 MR. STEIN: That question has been
3 asked and answered.

4 A I'm not understanding the question.

5 MR. EICHHORN: You're right. It's
6 been asked and answered.

7 Q So my question is if you're saying
8 that you think you likely would have decided not
9 to implant the embryo, does that mean that, in
10 making that decision, you would have decided you
11 would rather not have children than face a
12 somewhat increased risk of having a CF baby?

13 MR. STEIN: I object to that
14 because that presumes, as a part of the question,
15 that she can never have a future study done in
16 which her risk was not increased.

17 MR. EICHHORN: Well, but I'm
18 asking. I'm entitled to ask. That's what I'm
19 asking.

20 MR. STEIN: But that question is a
21 how-do-you-stop-beating-your-wife question.

22 MR. EICHHORN: No, it's not.

23 MR. STEIN: Because it presumes
24 that she never would on any other occasion be
25 afforded the opportunity of having a baby without

C. Grossbaum - Direct

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1 you have done?

2 A I don't know. Hindsight. I don't
3 know the answer to that.

4 Q Okay. Fair enough. All right.
5 That's all I needed to ask. I appreciate being
6 able to go back and do that.

7 Now, we're here today to find out about
8 Rosie and her condition, the treatment she's had,
9 that kind of thing. Okay? So first tell us
10 Rosie was born on what day?

11 A March 25, 2005.

12 Q And let me just ask you, after you
13 had the implantation done by Dr. Liccardi did you
14 have any further contact with the NYU IVF Center
15 or did you then go to Midwives of Denville at
16 that point to handle the pregnancy?

17 A I was with NYU up until about six
18 weeks, until they confirmed that it was a viable
19 pregnancy.

20 Q And during that time that you were
21 still following with them, were you also seeing
22 Midwives of Denville?

23 A No, because generally you don't --
24 it's too early to go to a regular -- people
25 who -- it's too early to start regular prenatal

EXHIBIT C

2981.101

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
DOCKET NO. 07-CV-1359

CHAYA GROSSBAUM and MENACHEM
GROSSBAUM, her spouse, individually
and as guardians ad litem of the
infant, ROSIE GROSSBAUM,

DEPOSITION OF:

Plaintiffs,
MENACHEM MENDEL GROSSBAUM
vs.

GENESIS GENETICS INSTITUTE,
L.L.C., of the State of Michigan,
MARK R. HUGHES, M.D., NEW YORK
UNIVERSITY SCHOOL OF MEDICINE and
NEW YORK UNIVERSITY HOSPITALS
CENTER, both corporations in the
State of New York, ABC
CORPORATIONS 1-10 and JOHN DOE
1-10,

COPY

Defendants.

B E F O R E: NANCY J. GILMARTIN, a
Certified Shorthand Reporter and Notary Public of
the State of New Jersey at the office of
NUSSBAUM, STEIN, GOLDSTEIN, BRONSTEIN & KRON,
ESQS., 20 Commerce Boulevard, Succasunna, New
Jersey, on Thursday, March 12, 2009, commencing
at 2:45 p.m., Pursuant to Notice.

GILMARTIN COURT REPORTING SERVICE
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M. Grossbaum - Direct

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- 1 A Do I have another one on the side?
- 2 Q No, whether or not you could have
- 3 been married before this.
- 4 A No.
- 5 MR. LEUCHTMAN: Either way, before
- 6 or during.
- 7 Q At the present time, do you and
- 8 your wife have any plans or any decision made as
- 9 to whether you do or do not want to have more
- 10 children in your family?
- 11 A We want to have more children. We
- 12 don't have any plans yet.
- 13 Q Okay. So is it fair to say is that
- 14 something you've discussed since Rosie was born?
- 15 A We discussed it, but that's pretty
- 16 much about as far as it goes.
- 17 Q So the two of you are on the same
- 18 page that you'd like to have more children, but
- 19 there's nothing specific yet?
- 20 A Yes.
- 21 Q And I gather you're both young so
- 22 you figure you have plenty of time to get
- 23 specific at some point. Is that fair to say?
- 24 MR. STEIN: I take it your
- 25 question, by getting specific, means making

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- 1 Q Okay. As we know, you and your
- 2 wife are both CF carriers. As a result of that
- 3 knowledge, when you decided to get pregnant, tell
- 4 us what discussion you and Chaya had about what
- 5 method you would choose to get pregnant and have
- 6 a child.
- 7 A Well, we met with the rabbis and we
- 8 were directed or suggested to do the whole IVF
- 9 and so on, and that was pretty much what we did.
- 10 Q When you say you met with the
- 11 rabbis, now, if I remember correctly, and I do
- 12 have notes from when I deposed your wife, she
- 13 said that this was not an issue that you
- 14 discussed with the rabbi at the synagogue a mile
- 15 away from your home.
- 16 A No.
- 17 Q Because she said you don't have a
- 18 personal relationship with him. Is that right?
- 19 A No. Correct.
- 20 Q So is it correct that you got in
- 21 touch with Rabbi Zalman Markowitz and he put you
- 22 in touch with Rabbi Aaron Jacobowitz?
- 23 A Correct.
- 24 Q And when you say you spoke to the
- 25 rabbis and IVF was suggested, was it Rabbi

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- 1 concrete plans.
- 2 MR. EICHHORN: Exactly.
- 3 MR. STEIN: To have a child.
- 4 A We would like to.
- 5 Q And have you decided when you do
- 6 endeavor to do that how you will go about doing
- 7 it?
- 8 A No. That's what we haven't thought
- 9 about yet.
- 10 Q So is that you haven't decided what
- 11 method to use yet to get pregnant again?
- 12 A We haven't even researched much of
- 13 what our options are. We haven't put them on the
- 14 table to make a decision.
- 15 Q So have you and Chaya had any
- 16 discussions about the different methods for you
- 17 to get pregnant and the pros and cons now that
- 18 you've already had Rosie?
- 19 A Not in that state of having pros
- 20 and cons and weighing each one out. Just more of
- 21 we'd like to have it and we have to come up with
- 22 something, some way or something that we can do.
- 23 Q So then would it be fair to say you
- 24 haven't really focused on the details of it yet?
- 25 A Correct.

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- 1 Jacobowitz who suggested the IVF?
- 2 A No, it wasn't Jacobowitz. First we
- 3 met with Tendler.
- 4 Q Before you met with Jacobowitz, you
- 5 met with Rabbi Tendler?
- 6 A Correct.
- 7 Q How did you learn about him?
- 8 A About who?
- 9 Q Rabbi Tendler. How did you learn
- 10 about him?
- 11 A Through Rabbi Markowitz.
- 12 Q And did you meet with Rabbi Tendler
- 13 in person or talk to him over the phone?
- 14 A Spoke to him in person.
- 15 Q Where did you see him?
- 16 A Either in his office or in his
- 17 home.
- 18 Q You don't recall where?
- 19 A No.
- 20 Q Do you know where he works?
- 21 A In Monsey.
- 22 Q At a synagogue?
- 23 A I believe so.
- 24 Q Is he the head rabbi of the
- 25 synagogue?

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- 1 A I don't know.
 2 Q What had you learned about him from
 3 Rabbi Markowitz that led you to go to see him?
 4 A That he's familiar with these types
 5 of things.
 6 Q When you say "these types of
 7 things --"
 8 A Meaning genetic type of stuff.
 9 Q And when you spoke to Rabbi Tendler
 10 was it he, Rabbi Tendler, you and your wife?
 11 A It was Rabbi Markowitz was there
 12 and then another rabbi, Rabbi Solomon was there
 13 as well.
 14 Q Who is Rabbi Zalman?
 15 A Solomon.
 16 Q Solomon. Sorry.
 17 A He's a basically a friend of ours.
 18 Q And you said Rabbi Jacobowitz was
 19 there?
 20 A No.
 21 Q No. So Rabbi Tendler, Rabbi
 22 Solomon, you and your wife?
 23 MR. STEIN: And Markowitz.
 24 A Correct.
 25 Q Oh, Markowitz. I'm sorry.

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- 1 Q Is Lubavitch a very conservative
 2 orthodox sect?
 3 A What do you mean?
 4 Q Well, as opposed to -- well, let me
 5 ask you.
 6 A Long coats, long pants, everything?
 7 Q No. But I mean, is there a
 8 difference to you between calling someone a
 9 conservative orthodox and a moderate or centrist
 10 orthodox? Do those terms have meaning to you?
 11 A No.
 12 Q Let me ask you this then: If you
 13 are Lubavitch, why did you not go to a Lubavitch
 14 rabbi to get advice on these issues?
 15 A Because when it comes to certain
 16 things, you go to professionals that know about
 17 the stuff instead of going to somebody you know.
 18 Also we went to Rabbi Solomon and Rabbi Markowitz
 19 are both Lubavitch and they both recommended to
 20 us to go to Rabbi Tendler because he's informed
 21 on the stuff.
 22 Q Who brought up the issue of
 23 abortion at that meeting?
 24 A I don't remember.
 25 Q Do you remember any other

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- 1 A Right.
 2 Q So what was the discussion? Did
 3 you go to Rabbi Tendler to ask him for advice?
 4 A Pretty much.
 5 Q And what was the substance of the
 6 discussion?
 7 A What our options were that
 8 basically I believe that Markowitz or Rabbi
 9 Solomon pretty much gave the -- what the story
 10 was and that was pretty much where it went.
 11 Q And what was Rabbi Tendler's advice
 12 to you?
 13 A Basically that abortion was brought
 14 up and he put that down. And it was pretty much
 15 I believe the IVF.
 16 Q Did you and your wife ask Rabbi
 17 Tendler for permission for her to use birth
 18 control?
 19 A I don't remember.
 20 Q Now, you and your wife are
 21 Lubavitch, correct?
 22 A Correct.
 23 Q Rabbi Tendler, he's not Lubavitch,
 24 correct?
 25 A Correct.

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- 1 information that Rabbi Tendler conveyed to you
 2 and your wife other than that abortion was out
 3 and that he recommended IVF? Do you remember
 4 anything else?
 5 A No.
 6 Q Do you recall about how long that
 7 meeting was?
 8 A No.
 9 Q Was this before or after you were
 10 married?
 11 A Before.
 12 Q Can you tell me -- you were married
 13 in 2002, correct?
 14 A Correct.
 15 Q So can you tell me the approximate
 16 year that you met Rabbi Tendler?
 17 A I can guess before that. I don't
 18 know when.
 19 Q You know it was before that, but
 20 you can't say when?
 21 A Right.
 22 Q Did you ever meet with Rabbi
 23 Tendler again?
 24 A No.
 25 Q Ever speak with him again?

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1 A I don't think so.

2 Q And did your wife ever meet with or

3 speak with him again, to your knowledge?

4 A I don't think so.

5 Q Did you have any more specific

6 discussion with Rabbi Tendler such as, other than

7 the fact that abortion was out and recommending

8 IVF, did you ask him about other testing, whether

9 he would or would not allow her to have it?

10 A I don't remember.

11 Q So after that meeting, did you and

12 your wife decide that when you would try to

13 become pregnant you would use the IVF method?

14 A Correct.

15 Q And did you have an understanding

16 back then as to what your chances were of having

17 a CF baby if you and your wife were to get

18 pregnant naturally?

19 A Yes.

20 Q What was your understanding?

21 A One in 25.

22 Q You mean 25 percent?

23 A Twenty-five percent.

24 Q One in four?

25 A One in four, right.

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1 Q When you spoke to Rabbi Tendler,

2 did he give you any names of particular either

3 doctors or centers where you could go for either

4 IVF or PGD testing?

5 A I don't think so. I don't know.

6 Q When Rabbi Tendler recommended IVF,

7 was the issue of PGD testing part of that

8 recommendation?

9 A Yes.

10 Q So what was your understanding as

11 to the potential benefit of using IVF and PGD

12 based upon your discussion with Rabbi Tendler?

13 A That it would bring down the risk

14 of having a child with CF.

15 Q Now, did there come a time when you

16 and Chaya decided to start trying to have a

17 child?

18 A What do you mean by that?

19 Q Well, in other words, she told me

20 that she was on the pill. So do you remember her

21 saying that?

22 A Okay.

23 Q Well, okay, let me do it this way.

24 Do you remember whether or not your wife was on

25 the pill?

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1 A Yes, she was.

2 Q So was she on the pill in order to

3 not get pregnant?

4 A Yes.

5 Q Did there come a time when the two

6 of you decided to have her stop using the pill?

7 A Yes.

8 Q Was that because the two of you

9 decided that you wanted to start a family?

10 A Yes.

11 Q So did you and your wife ask about

12 places that you could get IVF and PGD from

13 anyone?

14 A No. We were referred.

15 Q Who referred you?

16 A Between Rabbi Markowitz and Rabbi

17 Jacobowitz, that's where we got our referrals

18 from.

19 Q So you and your wife had

20 discussions with these two rabbis in which they

21 gave you names of somewhere or some places you

22 could go to to get IVF and PGD?

23 A Place, yes.

24 Q Place. What were you told?

25 A That NYU did it. And that's where

M. Grossbaum - Direct 21

1 Rabbi Jacobowitz was the masgiach.

2 Q So these rabbis gave you the name

3 of NYU?

4 A Yes.

5 Q And you had an understanding that

6 Rabbi Jacobowitz had been involved with NYU

7 before?

8 A Correct.

9 Q In cases in infertility cases for

10 orthodox people?

11 A Yes.

12 Q Orthodox Jewish people?

13 A Yes.

14 Q Now, how did you learn of Dr. Mark

15 Hughes' name?

16 A Dr. Liccardi at NYU.

17 Q So did you and your wife contact

18 NYU at any time before she learned she was

19 pregnant or after?

20 A NYU?

21 Q You're right. I'm sorry. That

22 was -- I had a mind freeze.

23 Tell me when you and your wife first got

24 in touch with NYU.

25 A Date wise?

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- 1 Q Approximately, if you can.
 2 A I don't know.
 3 Q Do you remember the first contact
 4 with NYU?
 5 A Basically we had a conversation
 6 with Dr. Liccardi.
 7 Q According to his records, that was
 8 late March of 2004.
 9 MR. STEIN: March 30th, to be
 10 exact.
 11 Q Exactly. Does that sound right to
 12 you?
 13 A Okay.
 14 Q Could be right; could be wrong.
 15 You don't know?
 16 A I don't know.
 17 Q The day you met Dr. Liccardi, was
 18 that the first time you had ever been to the NYU
 19 IVF center?
 20 A Yes.
 21 Q And is the same true for your wife,
 22 if you know?
 23 A Yes. I believe so.
 24 Q Did either of the rabbis go with
 25 you?

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24

- 1 Q And do you remember was it your
 2 wife asking questions or you or both?
 3 A Probably mainly my wife. I
 4 probably had a few in there.
 5 Q And as a result of that meeting
 6 with Dr. Liccardi, did that alter in any way your
 7 understanding about IVF and PGD and what its
 8 potential benefit was in your situation, or was
 9 it the same as what you already had understood?
 10 A Well, he basically explained to us
 11 what the process was and how we had to go through
 12 it. That was it.
 13 Q And did the PGD aspect come up
 14 during that consultation?
 15 A I don't remember.
 16 Q Was there any discussion at that
 17 first meeting about the percentage success rate
 18 of achieving a pregnancy, if you recall?
 19 A There was, but -- in general
 20 getting pregnant or --
 21 Q Yes. My question is do you
 22 remember whether there was a discussion about the
 23 chances that you and you your wife would
 24 successfully get pregnant, putting aside PGD?
 25 A He mentioned it. I don't remember

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- 1 A No.
 2 Q Do you remember that initial
 3 meeting?
 4 A To some extent.
 5 Q Tell me, first of all, can you tell
 6 me about how long that meeting was?
 7 A No.
 8 Q Tell me what you remember about it.
 9 A We basically just went through the
 10 process of what it was and that was pretty much
 11 what it was. He spoke a little bit about his
 12 family.
 13 Q So when you say the process and
 14 what it was, do you mean that he talked about the
 15 IVF process and how they would do it, those types
 16 of things?
 17 A Right.
 18 Q Do you remember any of the details?
 19 A No.
 20 Q Did you and your wife have any
 21 questions?
 22 A We probably did.
 23 Q Do you remember whether you did?
 24 A I remember we had questions. I
 25 don't know what they were.

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25

- 1 what it was.
 2 Q Was there any discussion about the
 3 chances of PGD testing being accurate and
 4 successful at that meeting?
 5 A I don't remember.
 6 Q Was there anything else at that
 7 first meeting that you can recall?
 8 A That's pretty much it. I don't
 9 remember the details in specifics.
 10 Q When you and your wife left after
 11 that meeting, what was your understanding as to
 12 what was going to happen next?
 13 A I think we had to go meet with the
 14 nurse and get started on some of the stuff.
 15 Q Do you remember what the next step
 16 in the process was?
 17 A No.
 18 Q Do you remember who you met with
 19 next?
 20 A No.
 21 Q Do you remember how long after
 22 that -- approximately how long after that first
 23 meeting it was that you went back to the center
 24 and met with anyone else?
 25 A I mean, I'm guessing it wouldn't be

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- 1 too long after. I don't remember though.
 2 Q Do you remember attending an
 3 orientation program?
 4 A No. I don't think I was there.
 5 Q Your wife mentioned an orientation
 6 program. Do you recall her saying that?
 7 A Yes.
 8 Q So that orientation program that
 9 she described you don't think you were present
 10 for?
 11 A I don't remember.
 12 Q So you don't remember whether or
 13 not you were present for the program?
 14 A Right. There was a number of
 15 different things going on. Some of them I was
 16 there; some of them I wasn't. So I don't
 17 remember which one is what.
 18 Q Do you remember signing various
 19 consent forms?
 20 A Yeah.
 21 Q Do you remember there being a
 22 consent form at that first meeting with Dr.
 23 Liccardi? Do you remember?
 24 A Specifically, I don't remember.
 25 Q I'm going to show you a copy of a

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- 1 A All the forms in general were
 2 shoved in our face, let's do it, move on.
 3 Q Well, what did you mean shoved in
 4 your face?
 5 A Meaning we had forms that we had to
 6 sign constantly.
 7 Q So there were a lot of forms?
 8 A There were a lot of forms. I don't
 9 remember which ones at what times and what each
 10 one was for.
 11 Q But I just want to be clear on
 12 this. I understand that there were a fair number
 13 of forms. Are you saying that people shoved them
 14 in your face and didn't give you the opportunity
 15 to read them or are you just saying there were a
 16 lot of forms?
 17 A I remember one specific time where
 18 we basically -- she had to do some testing. The
 19 only way to do it, we had to do the forms. We
 20 had to do it and move on it. That was pretty
 21 much it. So I don't recall if every single one
 22 of them was like that or if I was there every
 23 single one or if my wife brought it home and we
 24 signed it later. I don't remember each one.
 25 Q Well, by looking at this one we can

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- 1 consent form which we marked Grossbaum-1 at your
 2 wife's deposition. It's five pages long. And if
 3 you look, can you tell me is that middle line, is
 4 that your name and your signature?
 5 A Yes.
 6 Q And the date next to it of April
 7 what's --
 8 A 19th.
 9 Q 19, 2004, did you write in that
 10 date?
 11 A Yes.
 12 Q So that's all your handwriting?
 13 A Yeah.
 14 Q And the line above it, that's your
 15 wife's handwriting?
 16 A Yes.
 17 Q And she dated it March 31, 2004?
 18 A Correct.
 19 Q Do you recall there being a consent
 20 form that she executed almost immediately on
 21 March 31st and that you executed about three
 22 weeks later? Do you remember that happening?
 23 A No.
 24 Q Do you remember having any
 25 reluctance in executing any of the consent forms?

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- 1 see, do you agree, that you signed this three
 2 weeks after your wife did?
 3 A Probably, yes.
 4 Q And I went through in painful
 5 detail with your wife the details of these forms,
 6 and I don't plan to do that with you, but let me
 7 ask you, was it your understanding that, first of
 8 all, there was a chance that you may not become
 9 pregnant, that the IVF procedure may not succeed?
 10 A Yes.
 11 Q Was it also your understanding that
 12 there was a chance that the PGD testing may not
 13 be accurate and that a mistake could be made?
 14 A Being told that it's not a hundred
 15 percent, then there's a yes to that.
 16 Q Who told you about the PGD not
 17 being a hundred percent?
 18 A Dr. Hughes.
 19 Q How many times have you spoken with
 20 Dr. Hughes in total?
 21 A I believe once.
 22 Q Was that in person or by the phone?
 23 A Phone.
 24 Q And when you spoke with him, was
 25 your wife with you?

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- 1 A Yes.
- 2 Q So and was Dr. Hughes presumably,
- 3 to your understanding, at his office in Michigan?
- 4 A I don't know.
- 5 Q So did you and your wife have a
- 6 speaker phone that you could both hear at the
- 7 same time or was it a regular phone?
- 8 A Maybe two different hand sets.
- 9 Q Do you remember where you were when
- 10 you spoke with Dr. Hughes?
- 11 A In our apartment.
- 12 Q And do you have more than one hand
- 13 set to your phone there?
- 14 A I guess so.
- 15 Q I don't mean to be --
- 16 A I don't remember -- I believe we
- 17 did. I don't remember. I think we were on two
- 18 different hand sets. I can't say for sure.
- 19 Q Is it your recollection that you
- 20 and your wife were both involved in that
- 21 conversation with Dr. Hughes?
- 22 A Yes.
- 23 Q And did both of you participate and
- 24 say something during that discussion?
- 25 A Yes.

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- 1 Q And did both of you listen to what
- 2 Dr. Hughes was saying?
- 3 A Yes.
- 4 Q Other than him saying that PGD is
- 5 not 100 percent in terms of its ability to be
- 6 correct, do you remember him saying anything in
- 7 any more specifics about that other than it's not
- 8 100 percent?
- 9 A That he had a very high success
- 10 rate and that it pretty much was a regular thing.
- 11 I believe that he said that our mutations were
- 12 good to work with, and that he's very confident
- 13 in the procedure.
- 14 Q Do you remember whether you or your
- 15 wife, when she was in your presence, ever had any
- 16 discussion with anyone at NYU about the success
- 17 rates of PGD testing?
- 18 A I don't know.
- 19 Q Did you have an understanding that
- 20 the various things that needed to be done as part
- 21 of the IVF procedure created a potential risk to
- 22 the fetus, hopefully to become child?
- 23 A What do you mean?
- 24 Q In other words, did you have an
- 25 understanding that they needed to manipulate

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- 1 certain things that they were dealing with, eggs
- 2 and cells and with your wife's body, and did you
- 3 have an understanding that those manipulations
- 4 did carry a risk of damage to the fetus?
- 5 A Yes.
- 6 Q And you accepted that risk?
- 7 A That was the only way we could get
- 8 pregnant.
- 9 Q So you accepted the risk?
- 10 A Yes.
- 11 Q And you accepted the IVF procedure
- 12 understanding that it could fail?
- 13 A Yes.
- 14 Q And you accepted the PGD testing
- 15 understanding that it could make an error?
- 16 A Yes.
- 17 Q Did you also have an understanding
- 18 that the things required in order to achieve an
- 19 IVF pregnancy could result in injury to your wife
- 20 as well?
- 21 A Repeat it.
- 22 Q Did you have an understanding that
- 23 the procedures and the medications necessary in
- 24 order to achieve a pregnancy through IVF did
- 25 create a risk of injury to your wife as well?

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- 1 A I don't know. I mean, I don't
- 2 recall.
- 3 Q Let me just show you this document
- 4 we just referred to, Grossbaum-1, and do you see
- 5 in addition to the signature on the last page
- 6 that there are a set of initials at the bottom
- 7 right of each page? Could you just confirm for
- 8 me that those are your and your wife's initials
- 9 at the bottom of each page?
- 10 A Yes.
- 11 Q And I'll just show you page 2 --
- 12 actually page 3. And, again, I'm not going to go
- 13 through all of these, but the bottom where it
- 14 says No. 3, from the corticosteroids, this is
- 15 under the portion dealing with potential risks
- 16 that could happen, you see it says vaginal
- 17 infection, impaired wound healing, increases in
- 18 blood pressure, hypersensitivity reactions
- 19 resulting in shock, blood diseases, mood swings,
- 20 vertigo, insomnia, psychotic manifestations and
- 21 depression, loss of muscle mass, osteoporosis?
- 22 You see all those things listed there as
- 23 potential, although highly unlikely?
- 24 A Yes.
- 25 Q So does this refresh your memory

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- 1 about the fact that you understood back at the
 2 time, and I understand it was a number of years
 3 ago, that some of these treatments did create a
 4 potential risk of injury to your wife?
 5 A Yes.
 6 Q And you accepted that and your wife
 7 accepted that?
 8 A Well, she signed for it.
 9 Q Okay. Fair point.
 10 You understood that there was no guarantee
 11 that you would either become pregnant or that if
 12 you became pregnant your child would not have CF,
 13 correct?
 14 A Yes.
 15 Q And did you have an understanding
 16 at the beginning of this that your wife would
 17 need to undergo a series of tests including
 18 ultrasounds?
 19 A I guess so.
 20 Q And did you have any problem with
 21 your wife undergoing ultrasound?
 22 A Whatever is necessary.
 23 Q Had ultrasounds been specifically
 24 discussed with either Rabbi Tendler or the other
 25 rabbis?

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- 1 you initial all three pages of that document?
 2 A Yes.
 3 Q Now, these consent documents that
 4 you initialed page by page and signed, I assume
 5 you read them?
 6 A I don't remember.
 7 Q Are you saying it's possible that
 8 you didn't read them?
 9 A Everything is possible.
 10 Q Well, okay, but, you know, you're
 11 you; I'm me.
 12 A I don't remember. A lot of this
 13 stuff I relied on my wife. And throughout the
 14 whole process and procedure I relied on a lot of
 15 the stuff. Some of the information I knew about.
 16 Some stuff I didn't know about. And I relied on
 17 her information that it's good enough for me.
 18 Q She told us that she read them all
 19 and she understood them all. Do you remember
 20 that? Do you remember her saying that?
 21 A No, but if you say so, then it's
 22 fine.
 23 Q Let me ask you this: Back at the
 24 time when you were going through this was it
 25 your understanding that your wife was reading

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- 1 A I don't recall.
 2 Q Did you also understand that your
 3 wife was going to need to receive hormone
 4 injections?
 5 A That was all part of the in vitro.
 6 Q So you knew that that was part of
 7 it?
 8 A Yeah.
 9 Q Did you have a problem with that?
 10 A No.
 11 Q You knew that if you wanted to get
 12 pregnant you needed to do that?
 13 A That was part of the process.
 14 Q So would it be fair to say that you
 15 and your wife had decided you wanted to do this
 16 and you agreed to whatever was part of the
 17 process in order to do it?
 18 MR. STEIN: I object to the form of
 19 the question.
 20 A Most of the things that were
 21 necessary to become pregnant.
 22 Q I'm going to show you a document
 23 that was marked Grossbaum-2 at your wife's dep
 24 and ask you the same questions. Is it your name
 25 and signature and date and your writing and did

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- 1 everything and learning everything?
 2 A Probably. She did most of the
 3 research on all this stuff.
 4 Q And you're saying that you
 5 basically were relying on her knowledge and her
 6 judgment?
 7 A Yes. Most probably we discussed it
 8 a little bit, but all the technical terms and all
 9 the woman facts, that was above my head.
 10 Q So is it accurate to say then that
 11 you were involved and you had discussions with
 12 her, but you were largely relying on her
 13 knowledge --
 14 A Yes.
 15 Q -- and her judgment?
 16 A Yes.
 17 Q And if she was willing to sign
 18 something, it was okay with you?
 19 A Yes.
 20 Q Okay. So you yourself may not have
 21 actually read all these forms?
 22 A Yes.
 23 Q But now asking you in terms of
 24 specific memory, do you remember reading any
 25 forms?

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- 1 A I don't know. I can't tell you. I
2 don't know.
- 3 Q So you might have read all of them
4 or you might have read none of them?
- 5 A I don't remember. It was a lot of
6 things were going on then, so.
- 7 Q What else was going on then?
- 8 A Meaning all these different details
9 of where we had to be somewhere, going somewhere,
10 coming, doing, so.
- 11 Q Was this the biggest thing in your
12 life at that time?
- 13 A Yes.
- 14 Q And the two of you, were you both
15 behind it together 100 percent?
- 16 A Yes.
- 17 Q So was there any disagreement over
18 whether to do it?
- 19 A No, but she would be the one going
20 through it. I'm just the one standing next to
21 her. So just as much as I may be going through
22 it, I may be standing there next to her, she's
23 going through it. So it's a lot different, you
24 know, much more different for her than it is for
25 me.

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- 1 Q Okay. But there wasn't anything
2 else going on in your life that would distract
3 you from paying attention to this, was there?
- 4 A I don't think so.
- 5 Q And I'm going to ask you the same
6 question about another consent form we marked
7 Grossbaum-3. It's four pages. If you could
8 again look at the signatures at the end and the
9 initials on each page and tell me if you
10 initialed each page and if you signed and dated
11 it at the end?
- 12 A Yes.
- 13 Q Now, on this page, this document
14 which is called Addendum to IVF/ET Transfer
15 Consent-Embryo Biopsy and Preimplantation Genetic
16 Diagnosis, on page 3 paragraph 2 has a paragraph
17 and I'm going -- you can look at it while I read
18 it. It says, "We understand that because PGD is
19 a new procedure, a major risk is that the
20 procedure may not be successful, the genetic
21 analysis may fail or be incorrect, although in
22 PIVF experience with 60 plus patients to date,
23 the accuracy has been greater than 90 percent.
24 It is possible that a normal embryo may be
25 incorrectly identified as affected and not

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- 1 transferred as a result. Conversely, we
2 understand that an affected embryo may be
3 incorrectly identified as normal leading to the
4 possibility of an affected fetus and child."
- 5 Okay. Did I read that correctly?
- 6 A Yes.
- 7 Q Do you recall this language, as I
8 read it to you, do you recall reading this
9 before?
- 10 A I don't remember.
- 11 Q But whether you recall reading it,
12 was that consistent with your understanding?
- 13 A Yes.
- 14 Q And then it goes on. It says, "The
15 other risks include genetic and developmental
16 damage introduced during the procedure. However,
17 we understand that to detect such anomalies of
18 the fetus PIVF recommends that any PGD pregnancy
19 be monitored very carefully by serial ultrasound
20 examinations."
- 21 You knew that, am I right, that she was
22 going to need serial ultrasounds, multiple?
- 23 A I don't know what that is. Oh,
24 serial ultrasounds?
- 25 Q Serial means a group of them.

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- 1 A Yes.
- 2 Q Am I correct you had an
3 understanding that your wife was going to need a
4 bunch of ultrasounds as part of this?
- 5 A Yes.
- 6 Q And then the next sentence says,
7 "In addition, requires that at 10 weeks, or 12 to
8 16 weeks respectively, chorionic villus sampling
9 or amniocentesis (a collection of the fluid that
10 surrounds the fetus) be performed to obtain for a
11 comprehensive genetic analysis of amniotic fluid
12 and cells."
- 13 My question is, did you have an
14 understanding that, as part of the IVF process,
15 they were going to require that your wife undergo
16 amniocentesis or chorionic villus sampling?
- 17 A We discussed with them constantly
18 throughout the thing, throughout the whole
19 process, that we did not want to do that and
20 that's why we were going through this. Had we
21 wanted to go through that, we could have gotten
22 pregnant regularly and paid just to go get that
23 checked out and done accordingly. So we threw
24 out every single document you showed my wife
25 and through all these things we went through

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1 voiced an opinion.

2 Q Okay. My question though right now
3 is are you aware of your wife telling any
4 particular people at the center, other than Dr.
5 Liccardi, that she wouldn't go for either of
6 these?

7 A Yes. There were other people that
8 she said to it.

9 Q Do you know who any of those
10 people were?

11 A No. There were many different
12 people around the office.

13 Q Can you tell me if you know whether
14 any of them were physicians like Dr. Liccardi?

15 A No. They didn't have any stripes
16 on their shoulders.

17 Q Did you have an understanding as to
18 what the roles were of any of these people, you
19 know --

20 A No.

21 Q -- in other words, what doctor,
22 nurse --

23 A No.

24 Q -- lab person?

25 A No.

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1 Q And although you may not have been
2 the one who said it, assuming it was your wife
3 that said it, what was the reason for not
4 agreeing to undergo either amnio or CVS?

5 A That we were recommended.

6 Q I don't know what you mean.

7 A Basically anything that would --
8 because it wouldn't make a difference. What
9 would be the point of doing if you weren't going
10 to have an abortion?

11 Q So your reason was there's no
12 reason for it because if I'm not going to choose
13 to have an abortion, it doesn't serve any
14 purpose?

15 A Right, partially.

16 Q Partially to me means there's
17 something else.

18 A Basically anything that's not
19 necessary for -- since we wouldn't be having an
20 abortion, so that's why we wouldn't be doing it.
21 If we wouldn't be having an abortion, then it's
22 not necessary.

23 Q You told me that. Was that the
24 only reason?

25 A Right.

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1 Q Now, so you're saying that -- okay.
2 I want to explore for a second your rationale
3 that it wouldn't serve any purpose. Okay? Just
4 so you know where I'm going. You understood that
5 if you got pregnant naturally you had a
6 25 percent chance that your baby would have CF?

7 A Correct.

8 Q And you understood that by going
9 for IVF and PGD testing the chances of you having
10 a baby with CF were 2 or 3 percent, certainly
11 less than 10 percent, correct?

12 A Correct.

13 Q So would you agree with me that in
14 going for the IVF and the PGD you were reducing
15 the chance of a CF baby from 25 percent down to 2
16 or 3 or 4 percent?

17 A Yes.

18 Q Now, was there any religious
19 aspects to that decision or was it just the
20 reason you gave me?

21 A What do you mean?

22 Q In other words, your decision that
23 your wife wouldn't undergo either of these tests,
24 was that at all religiously based or was it just
25 for the reason you told me?

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1 A In general pregnancy, anything
2 that's not necessary to go through, religiously
3 we don't do any of that stuff.

4 Q So my question is did religion play
5 any role in your decision here or was it just the
6 reason you gave me before?

7 A Well, of course, it has religion.
8 If we're not going to have an abortion, then
9 that -- we wouldn't have an abortion because of
10 religious purposes. So that's where it all stems
11 from.

12 Q Now, what about the fact that --
13 what about the idea that by going for testing you
14 could learn whether or not there had been an
15 error and you could know in advance that you were
16 going to have a CF baby? Although you wouldn't
17 be aborting that baby, do you agree that that
18 would give you and your wife time to become
19 emotionally prepared for that?

20 A That would be a living hell.

21 Q A living hell to know in advance?

22 A A hundred percent. If you knew you
23 had a child that had an issue and that basically
24 you're waiting for your life to merge into a hell
25 and like a time bomb, would you await that

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1 approximately how many times a week you were
2 having normal sexual relations during that time?

3 A I have no idea.

4 MR. STEIN: During what time? I
5 object to the form.

6 Q During this time frame other than
7 when you were told not to.

8 A I don't know.

9 Q Well, can you estimate for me?

10 A No.

11 Q You don't remember?

12 A I don't remember.

13 Q When your wife had the embryos
14 implanted, were you there?

15 A Yes.

16 Q Who else was there?

17 A Dr. -- Rabbi Jacobowitz.

18 Q Who implanted them?

19 A I don't know. I think Dr.

20 Liccardi.

21 Q Did you and your wife have any
22 discussion with Dr. Liccardi that day before he
23 implanted the embryos?

24 A Yes.

25 Q And what did that discussion

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1 them was not a carrier, and the other, second
2 one, was a carrier but did not carry the disease.
3 It was not a double carrier, if you want to call
4 it that.

5 Q You said that one of them was not a
6 carrier?

7 A Meaning one of them was plain,
8 regular.

9 Q What do you mean by regular?

10 A Was not a carrier for cystic
11 fibrosis.

12 Q So that it had -- it was completely
13 devoid of CF. It didn't have it and it didn't
14 carry it either. There was none?

15 A Correct.

16 Q And the other one?

17 A Was just a carrier.

18 Q So after telling you that, what was
19 the rest of the discussion?

20 A That was pretty much it. Let's do
21 it.

22 Q Well, your wife testified that she
23 said -- this is what she said -- they said some
24 of the embryos that he tested that were good
25 embryos had CF and there were some good ones that

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1 consist of?

2 A He went through the different
3 styles of the embryos that he had or that were
4 available, which were good and stuff like that.

5 Q Can you tell me with any more
6 specificity than that what he said?

7 A He said that one of them was not
8 affected, you know, was no carrier, and he said
9 that one of them was a carrier.

10 Q Okay. Well, you've mentioned two.
11 Did you have an understanding as to how many
12 embryos there were that they had tested?

13 A I don't remember, eight, nine, 10.
14 I don't remember, 14, 13. I don't remember.

15 Q So what did he say about the group
16 of embryos?

17 A Some of them were good or a couple
18 of them were good, and the rest of them were not
19 developed enough to implant.

20 Q So putting aside the ones that were
21 not developed enough, do you remember anything
22 specific he told you about the ones that were
23 developed enough?

24 A Basically I remember about two of
25 them, the two that we were implanting. One of

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1 did not have CF but they were carriers for CF.
2 Did we want to use them and we said yes.

3 A They were carriers, correct.

4 Q So I'm just trying to make it -- to
5 clarify it because you said your recollection is
6 that one of them was completely clean, not even a
7 carrier.

8 A I believe so.

9 Q Do you remember once Dr. Liccardi
10 told you about the results, do you remember him
11 asking you if you wanted to have these two
12 implanted?

13 A Yes.

14 Q And you and your wife said what?

15 A Yes. If they were not affected,
16 then that's what we were basing it on, yes.

17 Q So you and your wife, your position
18 was as long as they're not CF, meaning that our
19 child will have CF, then it's okay?

20 A Yes.

21 Q So the implantation was done that
22 day?

23 A Yes.

24 Q And Rabbi Jacobowitz was there?

25 A Yes.

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1 Q He was there as the -- I'll butcher
2 the pronunciation.

3 MR. STEIN: Masgiach.

4 Q Masgiach. He was there in that
5 role, to make sure that the embryos that were
6 implanted into your wife were hers?

7 A Yes.

8 Q After that day, did you go back to
9 NYU at all?

10 A Couple times. Sometimes I would
11 drop her off and then wait in the car because
12 there's no parking or lack of parking.

13 Q Did you ever speak to any of the
14 doctors at NYU again after that day?

15 A I don't recall. I mean, possibly.
16 I don't remember.

17 Q And once your wife started her
18 prenatal care at Midwives of Denville, from that
19 time on did you ever speak to anyone at NYU
20 again?

21 A I don't think so.

22 Q Were you involved in going to your
23 wife's prenatal visits at Midwives of Denville?

24 A I think I had to go once. I think
25 that just for childbirthing thing.

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1 Q Was it your understanding that your
2 wife was -- had one or more ultrasounds done
3 while she was at Midwives?

4 A I don't know how many she had over
5 there.

6 Q But did you know that she had at
7 least -- she had them done, some number of them?

8 A I guess so.

9 Q I don't want to tell you.

10 A I don't know. I don't know how
11 many she had.

12 MR. STEIN: Then say it. If you
13 don't know, you don't know.

14 Q So back at the time you were not
15 aware -- you don't remember whether you were
16 aware she was undergoing ultrasounds?

17 A Yes.

18 MR. EICHHORN: Steve, do you have
19 any questions on liability before I must have on?

20 MR. LEUCHTMAN: Yes, I do.

21 MR. EICHHORN: We might as well do
22 it that way, right?

23 MR. STEIN: No objection.
24
25

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1 CROSS-EXAMINATION BY MR. LEUCHTMAN:

2 Q You may not remember the date
3 exactly, do you recall having the telephone
4 conversation that you spoke of earlier with your
5 wife and Dr. Hughes?

6 A Yes.

7 Q And does March 25, 2004 sound right
8 to you?

9 A Okay.

10 Q Okay. I guess that means yes. You
11 wouldn't disagree it was March 24th?

12 A I don't remember the date, so I
13 can't say for sure.

14 Q Now, I want to go through a list
15 of things that are mentioned in a form called
16 precase phone review of PGD informed consent
17 which was Exhibit 5 in your wife's deposition.
18 Before I do that though, I'll ask you have you
19 ever seen this form?

20 A Yes.

21 Q When did you first see it?

22 A When we got started with Mr. Stein.

23 Q Do you recall being told by Mark
24 Hughes that he was not your physician, that there
25 wasn't a physician/patient relationship between

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1 him and either you or your wife?

2 A Yes.

3 Q Do you recall being told that the
4 technology involved was not perfect?

5 A Yes.

6 Q Do you recall being told that what
7 was being done was, at least to some degree, an
8 experimental process?

9 A To some extent. He said it was an
10 experimental process and in the same breath
11 saying that he's very confident in the procedure.

12 Q Do you recall being told that the
13 objective of the procedure was to lower the risk
14 from a risk of 25 percent?

15 A Yes.

16 Q Do you recall being told that zero
17 risk was, and I'm quoting, "not realistic or
18 possible"?

19 A Yes.

20 Q Do you recall being told that the
21 technology could fail?

22 A I don't recall.

23 Q Do you recall being told that
24 Dr. Hughes did not regard himself or his lab as
25 perfect?

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- 1 A I don't recall.
- 2 Q Do you recall being told that the
- 3 technology to determine whether genes carried
- 4 cystic fibrosis had produced errors?
- 5 A Yes, eleven or something, 11 in a
- 6 number of years, hundreds of cases.
- 7 Q Do you recall being told that, and
- 8 again I'm quoting, "Conventional prenatal
- 9 testing, chorionic villus sampling at around 10
- 10 weeks or amniocentesis at around 15 to 16 weeks,
- 11 is necessary"?
- 12 A I don't recall.
- 13 Q Do you recall representing to
- 14 Dr. Hughes, you and your wife representing to
- 15 him, that all of your questions had been answered
- 16 in the telephone conversation?
- 17 A I believe so.
- 18 Q Do you recall that your response to
- 19 the statement that you could just get pregnant
- 20 and have CVS or amnio being, and I'm quoting, "We
- 21 do not like those odds"?
- 22 A Yes.
- 23 Q Do you recall being told that the
- 24 testing was complicated?
- 25 A No.

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- 1 Q Do you recall being told that there
- 2 were 11 errors in 14 years?
- 3 A Yes.
- 4 Q Do you recall being told that there
- 5 was a need to follow up with CVS or
- 6 amniocentesis?
- 7 A No.
- 8 Q Do you recall any mention of a New
- 9 York physician named Evans?
- 10 A I don't recall.
- 11 Q And finally, do you recall being
- 12 told -- I'm sorry, do you recall telling
- 13 Dr. Hughes that you wanted to give some thought
- 14 to embryo donation before consenting to it?
- 15 A Yes.
- 16 Q And did you ultimately not consent
- 17 to embryo donation?
- 18 A Yes.
- 19 Q And I know Mr. Eichhorn showed you
- 20 what was Exhibit 4 to your wife's deposition, and
- 21 I think you told us you don't remember signing or
- 22 initialing it, but are those your signature and
- 23 initials?
- 24 A Yes.
- 25 Q Just so I'm sure, did you ever have

M. Grossbaum - Redirect

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- 1 any conversation with Dr. Hughes other than the
- 2 one that the record reflects as having been in
- 3 March of 2004?
- 4 A I don't think so.
- 5 MR. LEUCHTMAN: Thanks. That's all
- 6 I have.
- 7 (Pause)
- 8
- 9 REDIRECT EXAMINATION BY MR. EICHHORN:
- 10 Q Before we get on to the starting
- 11 about Rosie a little bit, I just want to go over
- 12 this. So the odds of a 25 percent chance of you
- 13 having a CF baby were unacceptable to you and
- 14 your wife, correct?
- 15 A Correct.
- 16 Q And you told that to Dr. Hughes and
- 17 that's the reason why you decided to not get
- 18 pregnant naturally?
- 19 A Right.
- 20 Q And then after learning about PGD
- 21 and learning that its success rate was not a
- 22 hundred percent, was not guaranteed, but it was
- 23 much higher than -- much better than a 25 percent
- 24 chance, that was acceptable to you and that's why
- 25 you did it, correct?

M. Grossbaum - Redirect

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- 1 A Right.
- 2 Q What percentage chance of your
- 3 having a CF baby would have become unacceptable?
- 4 In other words, if a 2 or 3 percent chance of it
- 5 was okay, and we know 25 percent was not okay, at
- 6 what number did it become not okay for you?
- 7 MR. STEIN: I object to that.
- 8 You're asking him now what is his position now in
- 9 terms of how he thought then. And also I object
- 10 to it because it calls for him to speculate.
- 11 MR. EICHHORN: Okay. I don't agree
- 12 with you, but you can answer it.
- 13 MR. LEUCHTMAN: Well, which are you
- 14 asking, then or now?
- 15 A I don't know. We were --
- 16 basically, we were dealing -- we were making a
- 17 decision on the 98 percent and that's what we
- 18 made a decision on. So any -- earlier we didn't
- 19 have that information to make the decision. We
- 20 were making the decision on 98 or better. So
- 21 anything less, I don't know.
- 22 Q Well, okay, if you had learned that
- 23 the chances were not 98 percent but 90 percent,
- 24 would that have been acceptable to you?
- 25 A I don't know. It's a decision we

M. Grossbaum - Redirect

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1 would have to make then.

2 Q And are you saying that you're not
3 capable now of fairly figuring out what your
4 answer would have been back then?

5 A Correct.

6 Q So the only thing you can say is
7 that what you were told was acceptable, and since
8 you didn't consider anything else, having not
9 been told anything else, you can't answer about
10 anything else?

11 A Correct.

12 Q We asked your wife quite a few
13 questions, as you know, this morning about Rosie,
14 and I'm going to try it the easy way and see if
15 maybe it works. Did you listen to the answers
16 that she gave?

17 A Yes.

18 Q And the first thing I'll ask you is
19 did any of her answers strike you as being wrong?

20 A No.

21 Q Is Chaya more involved in giving
22 Rosie her treatments and whatever she requires
23 than you are?

24 A Yes.

25 Q Your job as a locksmith, do you

M. Grossbaum - Redirect

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1 into trouble with getting back and then how much
2 work do I actually get done while I'm there? And
3 if I get stuck by the Holland Tunnel because of
4 whatever, it's a long walk from the Holland
5 Tunnel to Morristown. So I just --

6 Q What do you mean a long walk?

7 A Meaning once sabbath comes in, we
8 don't drive, turn on lights, any of that stuff.

9 Q So if you were in the Holland
10 Tunnel when sabbath came, you'd have to ditch
11 your car there and walk home?

12 A Yes, unless, there are -- anything
13 but an emergency, if you want to call it that and
14 if you need to save a life. But regular Friday,
15 once the sabbath comes in, a person's driving,
16 they pull over and continue the journey on foot
17 or find a local guy that can go --

18 MR. STEIN: How many hours do you
19 work on Friday?

20 THE WITNESS: Well, Friday, I try
21 to get a little paperwork in and help out for --
22 help my wife with sabbath.

23 Q So the work that you do, do you do
24 it from home on Friday?

25 A Yes. I mean, unless it's local. I

M. Grossbaum - Redirect

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1 work hours? Are they set? Are they flexible?
2 How does that work?

3 A Flexible.

4 Q Can you tell us roughly how many
5 hours you're out away from Rosie and your wife
6 during the week as a result of your employment?

7 A I try to leave at about 9:00 in the
8 morning and get back about 8, depending on the
9 day, whatever that calculates to be.

10 Q It calculates to be a lot actually.

11 A Well, I leave -- basically leave
12 New York at 7, get back about 8, so.

13 Q So you leave your home in the
14 morning around 9 to get to work I guess around
15 10?

16 A Yeah.

17 Q And then leave work at around 7 at
18 night to get home around 8 at night?

19 A Right.

20 Q How many days a week?

21 A Monday through Thursday.

22 Q Friday, is that a religious day?

23 A No. Friday, just Friday night is
24 the sabbath. So if I was to leave into New York,
25 you know, when the sabbath comes in early, I run

M. Grossbaum - Redirect

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1 mean, if I have a job in Jersey or something like
2 that, then I'll do that.

3 Q And then do you work on weekends?

4 A Depending on the weekend, you know,
5 what needs to be done. And meaning Sunday on the
6 weekends. Saturday is out.

7 Q Is Saturday a religious -- Saturday
8 is the sabbath, right?

9 A Saturday is out. Sunday, depending
10 on what's going on, if I need to, then sometimes
11 I'll go in. If not, I'll spend it at home.

12 Q And on the sabbath is Rosie
13 involved yet in any -- does she go to temple?

14 A She went once.

15 Q I know last time we were here, of
16 course, you lived in a different place then and
17 your wife said that she didn't go to temple, she,
18 your wife, didn't go to temple on Saturday
19 because it was too far for Rosie to walk.

20 A Right.

21 Q And so now that you've moved, do
22 you go to the same temple?

23 A Yeah.

24 Q And do you walk to temple?

25 A Yes.